

A608BE1
TRANSCRIPT OF HEARING

SEPTEMBER 7, 2012

1 PUBLIC HEARING TO CONSIDER ADMINISTRATIVE CIVIL
2 LIABILITY COMPLAINT NO. R3-2012-0030
3 SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
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11 TRANSCRIPT OF HEARING BEFORE THE REGIONAL WATER
12 QUALITY CONTROL BOARD, CENTRAL COAST REGION,
13 SEPTEMBER 7, 2012
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FILE NO.: A608BE1

SEPTEMBER 7, 2012

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19 Michael Johnson
20
21 ALSO PRESENT:
22 Matthew Buffleben
Harvey Packard
23 Leo Sarmiento
24
25

1 SAN LUIS OBISPO, CALIFORNIA, SEPTEMBER 7, 2012
2 8:30 A.M.
3 - - -
4 MR. YOUNG: Good morning, everyone.
5 I'm Jeff Young chair of the Central Coast Regional
6 Water Quality Control Board. Today is September
7 7th. Welcome everyone to San Luis Obispo. We're
8 going to begin this meeting as a normal board
9 meeting, then we'll day go into the agenda item
10 which is an ACL hearing.
11 So to start off with the meeting we
12 need to did roll call. Mr. Harris.
13 MR. HARRIS: Mr. Young?
14 MR. YOUNG: Present.
15 MR. HARRIS: Mr. Jeffries?
16 MR. JEFFRIES: Here.
17 MR. HARRIS: Mr. Johnston?
18 MR. JOHNSTON: Here.
19 MR. HARRIS: Mr. Jordan?
20 MR. JORDON: Here.
21 MR. HARRIS: Dr. Wolff?
22 MR. WOLFF: Here.
23 MR. HARRIS: Monica Hunter?
24 MS. HUNTER: Here.
25 MR. HARRIS: Bruce Delgado, absent.

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1 MR. YOUNG: Okay. Thank you,
2 Mr. Harris. Agenda item 2 is introduction from
3 staff recognition. Mr. Harris, do you have any
4 issues?

5 MR. HARRIS: No, not at this point.

6 MR. YOUNG: Okay. And in terms of --
7 oh, all right. So we will move on to agenda item
8 3, which is the enforcement item for today, South
9 San Luis Obispo County Sanitation District
10 administrative civil liability.

11 Mr. Harris, can you introduce this
12 item, please?

13 MR. HARRIS: Certainly. The board's
14 consideration today is administrative civil
15 liability a R3-2012-0030 against the San Luis
16 Obispo County Sanitation District. The complaint
17 alleges that the South San Luis Obispo County
18 Sanitation District discharger caused untreated
19 wastewater discharge surface waters in the United
20 States on December 19 and 20, 2010. The alleged
21 discharge is in violation of sections of the
22 California Water Code and Federal Water Pollution
23 Control Act and Water Act. Sanitation sewer
24 leaching surface waters was unauthorized caused by
25 discharge failure to maintain and operate a

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<p>1 sanitary sewer collection system as required by 2 the use permit adopted the Regional Water Quality 3 Control Board Central Coast Regional. And 4 sanitary sewer collection system adopted by the 5 State Water Resources Control Board, State Water 6 Board. 7 This draft order recommends 8 \$1,408,007.50 in administrative civil liability 9 discharger which arose from the record civil 10 liability complaint prepared by the Central Coast 11 and State Water Resources for office of 12 enforcement staff's prosecution team. 13 Assisting the board today advising 14 board is myself executive officer, Mr. John 15 Robertson to my right, Mr. Brian Lodge to my 16 right, and Ms. Jessica Jahr counsel from the State 17 Water Board. 18 MR. YOUNG: Okay. Thank you. This is 19 the time and place for a hearing of the Central 20 Coast Regional Water Control Board for adoption of 21 administrative civil liability order against South 22 San Luis Obispo County Sanitation District. 23 This hearing will be conducted in 24 accordance with the hearing procedures that were 25 provided to the parties. Designated parties are</p> <p style="text-align: right;">Page 6</p>	<p>1 suggest to my colleague that because we have a 2 court reporter here it's important that only one 3 person speak at a time, otherwise it becomes a 4 very, very difficult task for her to separate the 5 testimony out and keep it straight and clear and 6 understandable. 7 MR. THOMAS: At what point do we 8 introduce the parties to give their three-minute 9 testimonies? 10 MR. YOUNG: Great question. And I'm 11 going to get to that probably at Page 3 of the 12 statement that I've got it in front of me. 13 MR. THOMAS: Thanks. 14 MR. YOUNG: For purposes of this 15 hearing, the functions of staff and counsel are 16 separated. Prosecution staff who are proposing 17 this action have had no communication with the 18 board members or the board's advisors, other than 19 for noncontroversial procedural matters. 20 The board's counsel has not advised the 21 prosecution team in this matter for this hearing. 22 The prosecution team consists of Michael Thomas, 23 assistant executive officer, Harvey Packard, 24 Matthew Buffleben, Leo Sarmiento, Jim Fischer, 25 Todd Stanley. Is Todd Stanley here? Okay.</p> <p style="text-align: right;">Page 8</p>
<p>1 as follows. Regional board prosecution team and 2 San Luis Obispo County. The designated parties 3 and their witnesses are subject to 4 cross-examination. The prosecution staff will be 5 allowed 180 minutes for their presentation, 6 including opening statements, direct testimony, 7 cross-examination and rebuttal. 8 South San Luis Obispo County Sanitation 9 District will be allowed 180 minutes for their 10 presentation, including opening statement, direct 11 testimony, cross-examination and rebuttal. Each 12 designated party will be allowed five minutes for 13 a closing statement. 14 All other persons are considered 15 interested persons and will be allowed three 16 minutes. And for those individuals please fill 17 out the speaker card which you'll find the white 18 cards in the back of the room. Fill them out 19 completely and hand them up here to Mr. Robertson 20 in the red shirt at the end of the table. The 21 chair may provide additional time at his 22 discretion. A timer will be used. 23 Board members, the advisory team and 24 staff counsel may ask questions to clarify 25 testimony of a witness at any time. And let me</p> <p style="text-align: right;">Page 7</p>	<p>1 Shelia Soderberg and Katie DiSimone. They are 2 advised by Julie Macedo, counsel from the State 3 Water Resources Control Board's Office of 4 Enforcement. 5 For this hearing the board's advisory 6 team consists of Jessica Jahr, counsel from the 7 State Water Resources Control Board Office of 8 Chief Counsel and Ken Harris interim acting 9 executive officer to my left, John Robertson, 10 Brian Lodge introduced earlier. 11 Each person who testifies at this 12 hearing shall begin by stating his or her name and 13 address unless the address has already been given. 14 All persons who may testify at this hearing please 15 stand now, even if you don't plan to testify but 16 are involved in this matter. Raise your right 17 hand and take the following oath. Do you solemnly 18 swear that the testimony which you will give in 19 this matter is the truth? Has anybody said 20 anything else? Okay. Thank you. 21 The order presentation hearing will be 22 as follows: Opening statements by prosecution 23 staff South San Luis Obispo County Sanitation 24 District. 25 Two, direct testimony of Mr. Thoma,</p> <p style="text-align: right;">Page 9</p>

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<p>1 followed by cross-examination by prosecution staff 2 Mr. Thoma. 3 Three, Central Coast Water Board 4 prosecution staff case in chief with 5 cross-examination by South San Luis Obispo County 6 Sanitation District. 7 Four, South San Luis Obispo County 8 Sanitation District case in chief with 9 cross-examination by prosecution staff. 10 Five, representatives of agencies, they 11 will be allowed three minutes each. 12 And to answer your question, sir. Six, 13 other interested persons, three minutes each. 14 Then we will have closing statements by 15 first the South San Luis Obispo County, five 16 minutes, and followed by prosecution staff, five 17 minutes. 18 Cross-examination of each witness will 19 occur after that witness' direct testimony has 20 concluded. The party offering the witness then 21 may then offer redirect testimony. 22 At the close of the hearing the board 23 members and advisory team will adjourn to closed 24 session to deliberate on the evidence as 25 authorized by Government Code Section 11126.</p> <p style="text-align: right;">Page 10</p>	<p>1 I'm senior staff counsel with the office of 2 enforcement. 3 MR. YOUNG: Okay. And to your left is? 4 MS. MACEDO: To my left is 5 Dr. Buffleben, he is the supervising engineer for 6 the state office, special investigations unit. 7 MR. YOUNG: Okay. 8 MS. THORME: Melissa Thorme from Downey 9 Brand representing South San Luis Obispo County 10 Sanitation District. And this is Olivia Wright 11 one of my associates. She will be helping me 12 present today. And then our parallel Sandra 13 Collier. 14 MR. YOUNG: Great. And welcome 15 everybody. 16 MS. THORME: Thank you. 17 MR. YOUNG: All right. Let's begin our 18 hearing. Let's have our opening statement by the 19 prosecution team. 20 MS. MACEDO: Great. Good morning chair 21 members of the board. As I just said, my name is 22 Julie Macedo and I'm senior staff counsel with the 23 office of enforcement. It's my pleasure to 24 present today what's going to be an all-day event 25 and clearly a packed house.</p> <p style="text-align: right;">Page 12</p>
<p>1 After the conclusion of the 2 deliberations the board will resume open session 3 and provide the ruling. 4 Please state your name, address, 5 affiliation of whether you have taken the oath 6 before you testify. We will begin with testimony 7 by staff. We've already rearranged this somewhat. 8 Okay. At this time evidence should be introduced 9 on the following issues. Whether the regional 10 board should issue, reject or modify the proposed 11 ACL order. I will now begin the hearing. 12 So let's start with our opening 13 statements. 14 MR. JEFFRIES: Before you do that I 15 think that if anybody has speaker cards, they're 16 over in that alcove on the left-hand side or the 17 right-hand side, they should be brought over to 18 Mr. Robertson. Because I saw some people 19 wandering around that didn't know what to do with 20 the speaker cards. 21 MR. YOUNG: These cards should go up 22 here. And then than perhaps what counsel can do 23 is introduce yourselves because I don't think that 24 the board has met all of you. 25 MS. MACEDO: Sure. I'm Julie Macedo,</p> <p style="text-align: right;">Page 11</p>	<p>1 I'm actually the region's liaison 2 attorney and it's my first enforcement matter 3 before the board. Other staff joining me include 4 Gerry Horner, chief economist; Jim Fischer, water 5 resource control engineer; Matthew Buffleben, 6 senior water resource control engineer, and Katie 7 DiSimone, water resource control engineer from 8 region three. Leo Sarmiento, Harvey Packard and 9 Michael Thomas have also been instrumental in 10 bringing this case to hearing, although they will 11 not be testifying today. 12 This enforcement matter concerns a 13 sanitary sewer overflow and while we're 14 concerned -- while we've covered substantial 15 information in the written materials, we'll cover 16 the high points in today's evidentiary hearing. 17 We know that we're asking you to adopt 18 an order with a significant penalty during a tough 19 economic time, and we don't take that lightly. We 20 would not be asking you to do that if you did not 21 have good reason and we didn't think that penalty 22 is warranted or necessary. 23 We also know that many on dischargers 24 with similar delayed maintenance issues to the 25 ones that the district faced in December of 2010</p> <p style="text-align: right;">Page 13</p>

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<p>1 are watching this hearing and we hope that the 2 board sends them a message that it is better to 3 deal with such issues as they arise, then hope 4 that problems don't pile up and lead to a spill 5 that has far reaching public health consequences 6 and ultimately could cost more than addressing the 7 problems in the first place. Such a result would 8 be both fiscally responsible and protective of 9 water quality. With that said, let's begin.</p> <p>10 There are two main issues to decide in 11 this hearing. The appropriate penalty under the 12 2010 enforcement policy and the volume discharge 13 during the overflow events that occurred on 14 December 19th and 20th of 2010.</p> <p>15 On December 19th and 20th there was an 16 illegal sewer overflow and we're arguing over how 17 to assess the penalty. While the district hasn't 18 had a similar spill of this type before, this was 19 a spill that affected more homes than any other 20 spill since the state started collecting 21 information in its database in 2007. As I said, 22 this is a matter of great importance around the 23 state.</p> <p>24 No defense applies to this spill event. 25 No defense under the Clean Water Act and no</p> <p style="text-align: right;">Page 14</p>	<p>1 penalty is fair based on other sanitary sewer 2 overflow cases decided under the policy around the 3 state. Conservative based on the circumstances 4 and volume of the spill, and appropriate because 5 it is needed to send a message to this particular 6 discharger.</p> <p>7 The recommended penalty is also fair 8 based on the total volume of sewage and storm 9 water we've calculated was spilled over the 10 two-day event. The penalty amount is in line with 11 other ACLCs for SSOs.</p> <p>12 While the district claims the overflow 13 was beyond its control, the facts and testimony 14 you will hear today will indicate otherwise. The 15 penalty should bare that out.</p> <p>16 As the board and the public will see, 17 the prosecution team's recommended penalty could 18 have been higher, but the prosecution team made 19 several conservative selections in the district's 20 favor; however, we feel that the penalty we are 21 ultimately recommending is appropriate, fair and 22 necessary.</p> <p>23 A common theme you'll hear today from 24 several of the witnesses is that the cause of the 25 spill could not be boiled down to a single cause.</p> <p style="text-align: right;">Page 16</p>
<p>1 defense in the district's permit. Both the Clean 2 Water Act and the district's permit prohibit 3 discharges of untreated or partially treated 4 wastewaters into waters of the United States.</p> <p>5 District counsel has argued and will 6 likely argue today that the district should pay no 7 penalty for this overflow. Its argument is flawed 8 for a number of reasons, not least of which that 9 it completely misstates the definition of the 10 upset and bypass defenses which do not apply to 11 this discharge violations.</p> <p>12 Furthermore, the district will argue 13 for low or inappropriate factors to be assigned to 14 various steps in the enforcement policy penalty 15 methodology which the prosecution team feels are 16 inappropriate due to the gravity of the spill, the 17 harm incurred by the public, and the failure of 18 the district to recognize its contribution to the 19 spill by years of delayed maintenance.</p> <p>20 The prosecution team's recommended 21 penalty is approximately \$1.4 million, after an 22 analysis that 1.1 million gallons of raw sewage 23 and storm water was discharged and an analysis of 24 the factors under the 2010 enforcement policy. 25 The prosecution team's recommended</p> <p style="text-align: right;">Page 15</p>	<p>1 There were several overdue preventative 2 maintenance issues and improper operating 3 procedures that led to the overflow and ultimately 4 the size of the spill.</p> <p>5 These issues included a pump discharge 6 valve being closed when it should have been 7 opened, emergency pump problems, a leaky influent 8 gate that may not have been addressed since the 9 plant's construction in the early 1960s, ponding 10 issues that allowed for water intrusion into 11 electrical pool boxes, and faulty electrical 12 issues.</p> <p>13 Finally, this matter had a significant 14 component. One of the main factors in the penalty 15 calculator is the harm caused by the spill, and 16 from the size of the audience and the amount of 17 public comments the board has received this spill 18 has caused a lot of harm.</p> <p>19 Now, the board can't directly 20 compensate the Oceano residents for any damage 21 caused by the sewage backup into homes, but up to 22 50 percent of the penalty amount can stay right 23 here in region three and be spent on a 24 supplemental environmental project. The 25 prosecution team fully supports a use of the</p> <p style="text-align: right;">Page 17</p>

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<p>1 penalty in this way.</p> <p>2 I think that the board has an</p> <p>3 opportunity to send a message to the district</p> <p>4 total hopefully on behalf of the residents of</p> <p>5 Oceano and to other dischargers who failed to</p> <p>6 address preventative maintenance issues until</p> <p>7 discharges such as this happen. Thank you.</p> <p>8 MR. YOUNG: Okay. And the district's</p> <p>9 opening statements.</p> <p>10 MS. THORME: Good morning, board</p> <p>11 members, Mr. Chairman, advisory team. As I said,</p> <p>12 my name is Melissa Thorme and I'm here</p> <p>13 representing the South San Luis Obispo County</p> <p>14 Sanitation District. This is such a big chunk of</p> <p>15 things to say, I'm just going to call them the</p> <p>16 district from now on. Just so everybody knows</p> <p>17 when I use that term that's what I mean.</p> <p>18 So I'd first like to say that the</p> <p>19 district greatly appreciates the additional time</p> <p>20 that was given to allow us to tell our entire</p> <p>21 story. And the story is basically a district that</p> <p>22 hasn't had a sewer spill in 25 years until this</p> <p>23 flood event occurred. And we hope today that your</p> <p>24 job will be taking a critical view of this case.</p> <p>25 You are the judge and jury in this case and so I</p> <p style="text-align: right;">Page 18</p>	<p>1 being kept from us. We asked under Public Records</p> <p>2 Act request, they were hiding documents under an</p> <p>3 investigative privilege, which is supposed to be</p> <p>4 maintained only for criminal cases. So we said</p> <p>5 okay, if you're going to have this be a criminal</p> <p>6 case then under the law you have to give us all</p> <p>7 the exculpatory evidence, things that would know</p> <p>8 maybe the district wasn't at fault. And they</p> <p>9 denied us under then as well. So we are at a</p> <p>10 little bit of a disadvantage in this case.</p> <p>11 So the other theme that I have is that</p> <p>12 on the other hand it seems to me a little bit like</p> <p>13 playing archery with a moving target. And I'll</p> <p>14 give you one example of that. One is on its</p> <p>15 private sewer lateral in-home spills. And under</p> <p>16 the sanitary sewer overflow permit it is not</p> <p>17 required that a district report in-home spills.</p> <p>18 And that administrative civil liability complaint</p> <p>19 in this matter alleged that these were category</p> <p>20 two spills and were not properly certified, and</p> <p>21 that was in paragraph 24 of the complaint.</p> <p>22 So when the district showed the</p> <p>23 prosecution team in our brief that only category</p> <p>24 one spills have to be certified within a certain</p> <p>25 time frame then the target changed. And now in</p> <p style="text-align: right;">Page 20</p>
<p>1 want you to listen to both sides and not just take</p> <p>2 the prosecution team's side on this, just to</p> <p>3 listen with a critical ear.</p> <p>4 As I was sitting trying to think of a</p> <p>5 theme for our opening statement I couldn't really</p> <p>6 decide between two different things. So I'm going</p> <p>7 to tell you both of my themes that I had for</p> <p>8 today.</p> <p>9 So on the one hand this case feels a</p> <p>10 little to me like a poker game. And the poker</p> <p>11 game is where the prosecution team has all the</p> <p>12 cards, all the face cards and all the aces, and we</p> <p>13 have to have our cards laying up on the table.</p> <p>14 And why I say that is because the district has</p> <p>15 been at a disadvantage from the beginning.</p> <p>16 The state has all the investigative</p> <p>17 power. They can send letters and say tell us this</p> <p>18 and tell us that. In fact, they sent letters</p> <p>19 saying please tell us that the advantages and</p> <p>20 disadvantages of each of the spill methodologies</p> <p>21 that you put forth. And the district has to</p> <p>22 answer all those questions or they can be under</p> <p>23 penalty by the state for not doing so.</p> <p>24 On the other hand, when we asked for</p> <p>25 documents from the prosecution team they were</p> <p style="text-align: right;">Page 19</p>	<p>1 the final brief the prosecution team is arguing</p> <p>2 that these are category one spills and need to be</p> <p>3 certified. And now they are the most important</p> <p>4 part of the prosecution team's case. And they've</p> <p>5 been out interviewing people, local residents,</p> <p>6 having meetings at local cantinas and trying to</p> <p>7 get people to come and testify, and at the same</p> <p>8 time they're keeping all that evidence of those</p> <p>9 interviews from the district.</p> <p>10 So our theme for today is asking the</p> <p>11 board members to keep in mind this uneven playing</p> <p>12 field and to keep in mind the actual facts of this</p> <p>13 case as you consider and make a decision today.</p> <p>14 Thank you.</p> <p>15 MR. YOUNG: Okay. Thank you. Kind of</p> <p>16 a point of clarification, aren't we also</p> <p>17 determining first liability before we get into any</p> <p>18 kind of a penalty calculation? Your presentation</p> <p>19 suggested it's simply a matter of us determining</p> <p>20 how much. Don't we first have to look --</p> <p>21 MS. MACEDO: I think everyone</p> <p>22 understands that there was a spill --</p> <p>23 MR. YOUNG: Correct.</p> <p>24 MS. MACEDO: -- on December 19th and</p> <p>25 20th.</p> <p style="text-align: right;">Page 21</p>

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1 MR. YOUNG: Right.
2 MS. MACEDO: To the extent that the
3 district isn't denying that there is a spill you
4 can reach the foundational question whether the
5 district was responsible for the spill or if
6 there's a defense and then what amount of penalty
7 should apply. We don't think there's a full
8 defense, but the spill did occur. So you're not
9 answering the question of whether the spill
10 occurred.
11 MR. YOUNG: Okay. I was curious
12 whether it was a preliminary question to be
13 answered first.
14 MS. MACEDO: We're past the point of
15 whether the spill occurred. Okay.
16 MR. YOUNG: Okay. All right. Let's
17 begin then with Mr. Thoma, correct? And so we
18 will now begin. Who has our clock, who is our
19 clock keeper? Okay.
20 MR. THOMA: Good morning, board
21 members. My name is Bill Thoma, as was stated. I
22 live at 3562 Empleo Street, San Luis Obispo,
23 California. I did take the oath and my
24 declaration is true and accurate as presented, and
25 so I would like to just -- the major conclusion to

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1 my report was that -- that I was looking at the
2 electrical issues related to what occurred on the
3 date of December 19th.
4 And my conclusion is that the cause of
5 the failure of the electrical system on that date
6 was a function of seals lacking -- water seals
7 lacking in a number of conduits that entered into
8 the influent building. And that is the cause of
9 this electrical issue. It had nothing to do with
10 maintenance or ongoing maintenance or operations
11 or replacement or deferred maintenance.
12 I welcome any questions you might have
13 about my report.
14 MR. JEFFRIES: The sealed that --
15 MR. YOUNG: I think what we should do
16 is let them go ahead and give their
17 cross-examination and then when they're done we
18 can do follow-up.
19 MS. MACEDO: Mr. Thoma is a district
20 witness so direct would go first?
21 MR. YOUNG: Correct.
22 MS. THORME: We're not going to have
23 any direct examination.
24 MR. YOUNG: Okay. All right. Then the
25 prosecution, do you have any cross-examination?

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1 MS. MACEDO: Okay.
2
3 CROSS-EXAMINATION
4 (Bill Thoma)
5 BY MS. MACEDO:
6 **Q. Okay. Do you have your declaration in**
7 **front of you, Mr. Thoma?**
8 A. Yes, I do.
9 **Q. When were you contacted to provide a**
10 **declaration in this matter?**
11 A. Approximately two months ago, a month
12 and a half ago, something like that.
13 **Q. What materials were you given to**
14 **review?**
15 A. I reviewed documents that were provided
16 to me in terms of the State Water Quality Control
17 Board's complaint. I reviewed -- I made a visit
18 to the site. I conducted an interview with the
19 operators that were on duty at the site. I have
20 reviewed -- I have knowledge of some of the work
21 that was done at that plant, as our firm has done
22 some design work at that plant. And that's about
23 it.
24 MS. JAHR: I don't want to interrupt
25 you, if you're referencing an exhibit can you just

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1 say that what that is for all board members if we
2 want to look at it?
3 MS. MACEDO: Absolutely. Yes. If I
4 refer to something specific.
5 MS. JAHR: You were referencing the
6 declaration, right?
7 MS. MACEDO: Oh, I'm sorry. Yeah I was
8 referring to the declaration which is Exhibit 25
9 submitted with the district's materials. I
10 apologize.
11 MS. JAHR: Thank you.
12 BY MS. MACEDO:
13 **Q. Were you provided with all of the**
14 **briefs in this action? You said you reviewed the**
15 **complaint. Did you review the prosecution team's**
16 **opening or rebuttal briefs?**
17 A. I do not recall.
18 **Q. You do not recall --**
19 A. I'm not sure that I can identify
20 exactly what you're talking about.
21 **Q. Okay. The prosecution team's submitted**
22 **an evidentiary brief on July 27th.**
23 A. I don't recall the date of the document
24 that I reviewed. I'm sorry, I think I may have
25 but I don't recall if that's the exact exhibit.

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1 If you want to show it to me I might recall.
2 **Q. Okay. Let's go about it a different**
3 **way. You said you were contacted a couple months**
4 **ago to prepare your declaration?**
5 A. Yes.
6 **Q. Okay. You prepared that declaration in**
7 **assistance with attorneys at Downey Brand?**
8 A. They reviewed it before it was
9 submitted; however, I developed this brief on my
10 own based on my own investigation and my own
11 interviews and conducted my own investigation.
12 **Q. When did you provide the first draft to**
13 **Downey Brand?**
14 A. I can't tell you the date. It was
15 probably about a week before the final was
16 completed.
17 **Q. Okay. Their submission was due in**
18 **August, so approximately August?**
19 A. Yes.
20 **Q. Okay. Have you reviewed any documents**
21 **since then?**
22 A. No, I haven't.
23 **Q. Okay. So you have not reviewed the**
24 **prosecution team's rebuttal brief?**
25 A. I don't believe so.

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1 **Q. Okay. And in your declaration you**
2 **describe yourself as an expert on electrical**
3 **issues, correct?**
4 A. Correct.
5 **Q. Okay. Would you describe yourself as**
6 **an expert on wastewater treatment plants?**
7 A. I would say I have experience in
8 wastewater treatment plants. We've done a number
9 of projects at wastewater treatment plants. I
10 would expect -- I would say yes.
11 **Q. Okay. Would you describe yourself as**
12 **an expert on standard operating procedures related**
13 **to valves?**
14 A. No.
15 **Q. Okay. Would you describe yourself as**
16 **an expert on grading or ponding issues?**
17 A. No.
18 **Q. Would you describe yourself as an**
19 **expert on leaky influent gates?**
20 A. No.
21 **Q. Have you ever been an expert before?**
22 A. Yes.
23 **Q. When was that?**
24 A. Twice. About ten years ago and once
25 about 25 years ago.

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1 **Q. I want to show you one item, and I'll**
2 **pop it up for board members. This is Exhibit 2**
3 **submitted with the prosecution team's opening**
4 **brief, and I will hand the witness a copy. Does**
5 **counsel need a copy or do you have it handy?**
6 MS. THORME: We don't need it.
7 BY MS. MACEDO:
8 **Q. So if I'm understanding your**
9 **declaration correctly, you're an expert in**
10 **electrical matters, correct?**
11 A. Yes.
12 **Q. Okay. If you could turn to the final**
13 **page of the exhibit, Page 3, and I'll scroll down**
14 **to Page 3 on the screen. I will represent to you**
15 **that this is an excerpt from a budget from the**
16 **district's 2010 to 2011 budget, taking about a**
17 **proposed electrical system upgrade. Take as much**
18 **time as you need to read it.**
19 A. Okay. I've read it.
20 **Q. Have you seen this document?**
21 A. Yes, I have.
22 **Q. Okay. Had you considered this document**
23 **prior to submitting your declaration?**
24 A. Yes, I have.
25 **Q. Okay. In your expert opinion is it**

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1 **best standard of care to allow wiring that is**
2 **deteriorating due to groundwater intrusion to**
3 **continue to not be upgraded?**
4 A. Wiring that is deteriorating, correct,
5 would not be adequate to remain in service;
6 however, I have found that not all the wiring in
7 the facility was deteriorating.
8 **Q. That wasn't my question. You**
9 **understand my question. So separate and apart**
10 **from the cause of the spill, as an expert**
11 **electrician, the reason you're here today,**
12 **deteriorating groundwater -- or deteriorating**
13 **wiring from groundwater intrusion is not the best**
14 **standard of care?**
15 A. Deteriorating wire is not -- that has
16 not been replaced is not a good standard of
17 care.
18 **Q. Thank you.**
19 A. If identified as deteriorating. Not
20 all the wiring in that facility was
21 deteriorating.
22 **Q. You read this document that there had**
23 **been problems identified with deteriorating**
24 **groundwater, correct?**
25 A. Right.

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<p>1 MS. MACEDO: Thank you. Nothing 2 further for this witness. 3 MR. YOUNG: Okay. Any board questions? 4 Mr. Jeffries. 5 MR. JEFFRIES: Good morning, sir. 6 THE WITNESS: Good morning. 7 MR. JEFFRIES: Nice to have you have 8 here. 9 THE WITNESS: Thank you. 10 MR. JEFFRIES: I have probably three 11 questions for you. One is the conduits that you 12 referred to was the seals that were faulty, were 13 they below grade? 14 MR. THOMA: The conduits were below 15 grade, yes. 16 MR. JEFFRIES: Is there a periodic 17 maintenance procedure to examine those particular 18 conduits that are below grade for water intrusion? 19 MR. THOMA: A wire in conduit below 20 grade is expected to be in water. By definition 21 it's considered a wet location, so the answer is 22 the -- so it is a wet location. The seals are not 23 normally in any experience that I've had been a 24 function of any inspection proceeding. 25 MR. JEFFRIES: So you're saying that</p> <p style="text-align: right;">Page 30</p>	<p>1 MR. YOUNG: Okay. And in your review 2 of the information that was provided to you did 3 you find any electrical code violations? 4 MR. THOMA: Of the documents or of the 5 facility? 6 MR. YOUNG: Of the facility, you know, 7 anything that you thought -- you mentioned the 8 seals. I'm wondering if you picked up on anything 9 else that may have been involved in causing the 10 sequence of events that caused this spill? 11 MR. THOMA: There was nothing that I 12 saw that was a code violation that resulted in any 13 of the outage condition that occurred. What I 14 would say is that the seals were a violation 15 themselves for having not been placed in the first 16 place during construction. 17 MR. YOUNG: Okay. 18 MR. THOMA: That should have taken 19 place probably back in 1986, '87. 20 MR. YOUNG: Thank you. Mr. Jordan and 21 then Mr. Johnston. 22 MR. JORDON: Good morning, Mr. Thoma. 23 The description you're giving of what you 24 inspected is wiring and conduit. The picture up 25 on -- that was up there a moment ago is not wiring</p> <p style="text-align: right;">Page 32</p>
<p>1 once the seal's placed then that should be 2 serviceable for the life of that facility? 3 MR. THOMA: Yes. 4 MR. JEFFRIES: And is this location, is 5 it normally an area that is wet? 6 MR. THOMA: Yes, it is. 7 MR. JEFFRIES: Is the wiring, is it a 8 plastic coating or a cloth coating? 9 MR. THOMA: The wiring that was 10 installed? 11 MR. JEFFRIES: Yes. Is it a 12 submersible type of wiring? 13 MR. THOMA: Yes, it's THW wire which is 14 the wet -- the 'W' means wet. 15 MR. JEFFRIES: I understand. All 16 right. Thank you, sir. 17 MR. YOUNG: I have a few questions for 18 you. I noticed in my reading of the brief 19 mentions of plumbing code, but I was interested in 20 whether the electric code applies to this 21 facility. 22 MR. THOMA: Of course, yes. 23 MR. YOUNG: Okay. 24 MR. THOMA: California Electric Code, 25 yes.</p> <p style="text-align: right;">Page 31</p>	<p>1 and conduit, it looks like it's loose wiring in a 2 vault. Now, did you observe any wiring that more 3 closely resembles what was up there on the board? 4 MR. THOMA: I'm sorry, I'm not sure I 5 understand your question, please. 6 MR. JORDON: Okay. You described 7 conduit and wiring, that's wiring that's in a wet 8 location and sealed, and this is supposed to be 9 there. 10 MR. THOMA: Correct. 11 MR. JORDON: When I look at that 12 picture it's not in the conduit, it doesn't look 13 like it's supposed to be in a wet location 14 undergrade. So my question was did you observe 15 any wiring in your review that resembled that 16 picture? 17 MR. THOMA: I have reviewed that box. 18 And to clarify, is that box is below grade and it 19 is anticipated that the water would be present 20 occasionally incidentally in that box. So the 21 seals are between that box and the inside of the 22 building where the damage and the incident 23 occurred. 24 So this box is outside on grade exposed 25 to the weather. When that -- and when you pull</p> <p style="text-align: right;">Page 33</p>

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<p>1 wires from -- through a conduit you -- when you 2 get from one building to another there's too many 3 90 degree elbows to go through. So you have to 4 place boxes on the site for pulling. So that's a 5 pull box where they pull wires to, and then you go 6 into the building. Where it goes into the 7 building from the exterior box is where the seals 8 were to have been placed.</p> <p>9 MR. JORDON: But still my question was 10 did you observe any situation similar to that 11 where there was bare wiring that was decomposing 12 due to submerging water?</p> <p>13 MR. THOMA: No, I did not.</p> <p>14 MR. JORDON: Thank you.</p> <p>15 MR. YOUNG: Mr. Johnston.</p> <p>16 MR. JOHNSTON: Mr. Thoma, I've just 17 been reviewing your declaration, and tell me if 18 I'm correct, it appears that your analysis of what 19 happened then is that there was a shunt trip 20 switch in the box we've been talking about, which 21 is below grade, expected to get water on occasion, 22 and that the conduit going into the box containing 23 the shunt trip switch was lacking seals which had 24 been specified in the original 1986 construction 25 which the original electrical contractor hadn't</p> <p style="text-align: right;">Page 34</p>	<p>1 pump; is that correct?</p> <p>2 MR. THOMA: Correct. It's at the 3 exterior mid-level landing in the influent pump 4 area. And as I understood it from the plans was 5 an emergency shut off for that confined space.</p> <p>6 MR. JOHNSTON: And what I'm seeing on 7 the diagram is that where the conduit entered the 8 building there should have been a seal on each 9 side of the wall, correct?</p> <p>10 MR. THOMA: I don't know that it was on 11 either side or if it was on just the one side. I 12 believe it would -- I believe it would have been 13 indicated to be just on one side.</p> <p>14 MR. JOHNSTON: Now, would there also 15 have been seals on the conduit in the box, in that 16 box that was -- that got flooded?</p> <p>17 MR. THOMA: Not necessarily, and most 18 times not in the box.</p> <p>19 MR. JOHNSTON: And when I say the 20 "box," I'm not referring to the box that contains 21 the shunt trip switch, I'm referring to the pull 22 box that was flooded.</p> <p>23 MR. THOMA: The vault?</p> <p>24 MR. JOHNSTON: The vault, yes.</p> <p>25 MR. THOMA: No, they would normally not</p> <p style="text-align: right;">Page 36</p>
<p>1 put in?</p> <p>2 MR. THOMA: Correct.</p> <p>3 MR. JOHNSTON: Because of the lack of 4 the seals that water came into that box and that 5 that tripped and therefore tripped the breaker 6 controlling all four influent pumps; is that 7 correct?</p> <p>8 MR. THOMA: It tripped one circuit 9 breaker, that impact then tripped all four pumps. 10 There's an exhibit on the board where I might just 11 point out real quickly, right there there's the 12 original construction documents for 1986. This is 13 exhibit -- I believe it's D -- I mean A in your -- 14 in my declaration. And those words right there 15 (indicating) I believe state all conduit -- seal 16 all conduits typical. And the little dots there 17 indicate the seal locations.</p> <p>18 The box was right outside here. The 19 seals were between it and the inside building. 20 The water intruded from the box outside in through 21 those conduits without the seals and into the 22 building. That's the location of the shunt trip 23 switch.</p> <p>24 MR. JOHNSTON: Okay. So the shunt trip 25 switch is in the building containing the influent</p> <p style="text-align: right;">Page 35</p>	<p>1 be in the vault.</p> <p>2 MR. JOHNSTON: Okay. So you would not 3 normally have seals in a vault. What I'm 4 wondering about is you assert in your declaration 5 that had the work that was considered for 6 budgeting in I think it was 2004, 2005 been done, 7 that even had they pulled new wire through there 8 that they would not have known that there were no 9 seals, or they would not have known that seals 10 were required, to put it more correctly. They 11 would have known there were no seals because they 12 were able to pull the wire cable through?</p> <p>13 MR. THOMA: Correct.</p> <p>14 MR. JOHNSTON: But they would not have 15 known that seals were required?</p> <p>16 MR. THOMA: Correct.</p> <p>17 MR. JOHNSTON: And that's what I'm 18 trying to understand. It seems to me if -- or at 19 least that's what I'm trying to get my head 20 around. If you've got a contractor doing that 21 budgeted work or that work that was considered for 22 budgeting in 2004, 2005, they're going to pull 23 wire presumably from that vault to this shunt trip 24 switch box in the pump room, and would they be 25 referring to this power plant that we're looking</p> <p style="text-align: right;">Page 37</p>

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<p>1 at here?</p> <p>2 MR. THOMA: It's possible that they</p> <p>3 could be. It's possible -- it's more likely that</p> <p>4 they would not, but that's a hypothetical</p> <p>5 question. I'm not sure that they would or would</p> <p>6 not.</p> <p>7 MR. JOHNSTON: Well, how would they</p> <p>8 know where -- I mean, to pull wire you need to</p> <p>9 know where both ends of it are?</p> <p>10 MR. THOMA: Well, replacing the wire is</p> <p>11 a matter of pulling the wire out from one end,</p> <p>12 pulling the rope in, pulling the new wire in</p> <p>13 re-terminating.</p> <p>14 MR. JOHNSTON: Right. So you have to</p> <p>15 know where both ends are?</p> <p>16 MR. THOMA: Yes, that's correct.</p> <p>17 MR. JOHNSTON: And you --</p> <p>18 MR. THOMA: But you don't know what the</p> <p>19 route of that conduit takes to get from point A to</p> <p>20 point B. You see the end of it on this end, you</p> <p>21 see the end of it at this side, and there's no way</p> <p>22 to know if there's a hydraulic issue in that</p> <p>23 conduit or not.</p> <p>24 MR. JOHNSTON: I understand, but what I</p> <p>25 guess what I'm asking you is, if I'm the</p> <p style="text-align: right;">Page 38</p>	<p>1 Again, I don't -- I'm not trying to be difficult.</p> <p>2 I just -- I don't know what -- how the plans and</p> <p>3 specifications called for that to be completed. I</p> <p>4 did not see the plans and specifications.</p> <p>5 MR. JOHNSTON: Thank you, sir.</p> <p>6 MR. YOUNG: Okay. Any other board?</p> <p>7 Dr. Wolff.</p> <p>8 MR. WOLFF: Mr. Thoma, when you talked</p> <p>9 about sealing the conduits, isn't the general</p> <p>10 industry practice to seal to prevent intrusion of</p> <p>11 water in conduits?</p> <p>12 MR. THOMA: I'm sorry?</p> <p>13 MR. WOLFF: Isn't the seal location</p> <p>14 generally placed at a point that would prevent</p> <p>15 water intrusion into the conduits?</p> <p>16 MR. THOMA: Yes.</p> <p>17 MR. WOLFF: Therefore, shouldn't the</p> <p>18 seal be located in the J-box rather than -- the</p> <p>19 junction box rather than in the lower elevation of</p> <p>20 a facility?</p> <p>21 MR. THOMA: There's no code that talks</p> <p>22 about the location of a seal, it strictly talks</p> <p>23 about that you should seal to prevent moisture</p> <p>24 intrusion. I think that you could arguing either</p> <p>25 direction, it's not necessarily going to be the</p> <p style="text-align: right;">Page 40</p>
<p>1 electrician going into the vault and I'm told to</p> <p>2 replace this wire I have to know where both ends</p> <p>3 of the wire are. I have to look at some sort of</p> <p>4 plans, right, to know where the wire's going, to</p> <p>5 know where I'm pulling to, right?</p> <p>6 MR. THOMA: In pull boxes not</p> <p>7 necessarily, no. I mean you're pulling wire from</p> <p>8 one location, you're identifying it by pulling on</p> <p>9 it and identifying it at the other location. You</p> <p>10 don't necessarily need to know where it's going.</p> <p>11 You're just simply replacing that wire for wire.</p> <p>12 MR. JOHNSTON: Okay. So then if you --</p> <p>13 you're an electrical contractor, right?</p> <p>14 MR. THOMA: Yes.</p> <p>15 MR. JOHNSTON: So if you were -- if you</p> <p>16 were responsible if that budgeted -- or that job</p> <p>17 that was considered in the budget, replacing that</p> <p>18 wire with waterproof wire, would you have been</p> <p>19 working from plans to do it or would you have</p> <p>20 simply gone and pulled wire to see what wiggled on</p> <p>21 the other end?</p> <p>22 MR. THOMA: I would -- that's a</p> <p>23 hypothetical question. I don't know what I would</p> <p>24 have done unless I had a set of plans and</p> <p>25 specifications to answer that question from.</p> <p style="text-align: right;">Page 39</p>	<p>1 location of the seal in the box.</p> <p>2 MR. WOLFF: If the National Electric</p> <p>3 Code requires sealing wet locations, wouldn't that</p> <p>4 indicate that the seal should be at a point that</p> <p>5 prevents water intrusion into the conduit?</p> <p>6 MR. THOMA: No, I would disagree with</p> <p>7 that.</p> <p>8 MR. WOLFF: So you could therefore have</p> <p>9 moisture and water intrusion that would remain in</p> <p>10 the conduit?</p> <p>11 MR. THOMA: You want to prevent water</p> <p>12 from running into a conduit, but there's always</p> <p>13 going to be water in a conduit just by virtue of</p> <p>14 condensation. Nearly every wire you pull out of</p> <p>15 the underground conduit is wet, when it comes out</p> <p>16 it's wet because of the condensation in the</p> <p>17 conduit itself. And sometimes it's immersed in</p> <p>18 water for its entire life.</p> <p>19 MR. WOLFF: In the circumstance that we</p> <p>20 have here there had been a history of water</p> <p>21 ponding into the junction box based on some</p> <p>22 evidence that I had read. Therefore, wouldn't the</p> <p>23 consideration of putting the seal in the box be a</p> <p>24 better location than a seal in the basement?</p> <p>25 MR. THOMA: Would it be a better</p> <p style="text-align: right;">Page 41</p>

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<p>1 location? It possibly could be, that's conjecture 2 on our part. We weren't, again, asked to design 3 the facility, nor was the operator the designer of 4 the facility as I understand it. So I can answer 5 that question, would it be better, possibly. 6 There were drains in the boxes that drained to 7 other locations. I can't argue that it could have 8 been a better location. It's not necessarily the 9 only location, however. 10 MR. WOLFF: So when you stated earlier 11 with your experience that you do provide 12 electrical services in various facilities, so 13 therefore you do have experience with wet 14 locations? 15 MR. THOMA: Correct. 16 MR. WOLFF: And so on your other 17 projects do you typically put the seal upstream as 18 I'll call it versus downstream from where water 19 could flow? 20 MR. THOMA: My typical approach would 21 be to have an air gap and actually rise the 22 conduits above the water level so it doesn't 23 actually enter into the wet location, and then 24 perhaps put a seal on one side or the other to 25 prevent just incidental moisture from entering.</p> <p style="text-align: right;">Page 42</p>	<p>1 applications, that's correct. 2 MR. WOLFF: Okay. Outside of 3 residential applications? 4 MR. THOMA: Outside of residential 5 applications, commercial applications, industrial 6 applications, it's not a requirement; it is often 7 recommended. 8 MR. WOLFF: What's the -- I couldn't 9 see on the single line diagram the capacity of the 10 main breaker. I assume it's a 480 volt three 11 phase system? 12 MR. THOMA: It was a 480 volt three 13 phase system. If you want to go to exhibit -- I 14 believe it's B. Exhibit B. That's the breaker 15 that tripped. That's a 400 amp breaker. It 16 flows -- that I believe is the 150 amp breaker and 17 a motor control center No. 1 that feeds on to a 18 main breaker for the motor control center that 19 feeds the influent pumps. That is the breaker 20 that was tripped on the date of the December 19th 21 event. 22 MR. WOLFF: Right. So the main breaker 23 is a 12 combo amp breaker? 24 MR. THOMA: This one right here, yes. 25 MR. WOLFF: All right. And this is a</p> <p style="text-align: right;">Page 44</p>
<p>1 That was actually the fix that was provided for 2 here was to reroute those conduits up over the 3 wall and back down so there was an air gap so the 4 water couldn't make continuous entry into the 5 building. 6 MR. WOLFF: Thank you. My other 7 question is as part of the evaluation, 8 investigation and corrective actions that you took 9 you performed a protective device coordination 10 study? 11 MR. THOMA: Yes, we did. 12 MR. WOLFF: And is a protective device 13 coordination study required in the National 14 Electrical Code? 15 MR. THOMA: Is it required? For 16 certain facilities, yes. I believe healthcare is 17 required. I'm not certain whether wastewater 18 treatment plants is one. I can't answer that 19 question, but it's not required by code. 20 MR. WOLFF: So the National Electrical 21 Code does not require protected device 22 coordination study in the electrical systems that 23 you have applications which are nonresidential, is 24 this the case here? 25 MR. THOMA: It's not required for all</p> <p style="text-align: right;">Page 43</p>	<p>1 480 volt system, correct? 2 MR. THOMA: Yes, sir. 3 MR. WOLFF: Is there a code requirement 4 on the 480 system, a thousand amp breaker or 5 larger to have some type of additional protection? 6 MR. THOMA: It's required to have 7 ground vault protective device protection. It 8 also requires testing to be done on it after it's 9 installed, correct. 10 MR. WOLFF: All right. And so when you 11 have the systems with the ground vault protection 12 and also additional protection, which I would 13 assume is like over-current, et cetera, is there 14 some type of a coordination that is required to 15 prevent tripping? 16 MR. THOMA: You would normally do 17 everything you could to prevent -- to provide 18 selective coordination, correct, so that the 19 downstream breakers would trip before the main, 20 correct. And that study -- we don't know whether 21 that study was done, quite possibly it was. Do 22 know, but the designer and the installer of this 23 facility may have done that. 24 MR. WOLFF: You performed this study 25 eventually, didn't you, as part of the corrective</p> <p style="text-align: right;">Page 45</p>

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<p>1 action?</p> <p>2 MR. THOMA: We looked at the operators</p> <p>3 because of the fact that the 400 amp breaker</p> <p>4 tripped ahead of one of the downstream breakers.</p> <p>5 We did look at is there something that could be</p> <p>6 done to better coordinate the breakers downstream</p> <p>7 with the upstream breaker. And that was the</p> <p>8 impetus for doing the coordination study.</p> <p>9 We did identify that because of the</p> <p>10 molded case circuit breakers, and I know, sir,</p> <p>11 that you're familiar with this equipment. The</p> <p>12 molded case circuit breakers in this range in our</p> <p>13 instantaneous region are very much overlapping in</p> <p>14 a lot of vault conditions. So the higher vault</p> <p>15 conditions pretty much any one of those four</p> <p>16 breakers could have tripped.</p> <p>17 So it's impossible to completely</p> <p>18 selectively coordinate all four breakers so that</p> <p>19 the downstream breaker trips ahead of the upstream</p> <p>20 breaker. So it wasn't -- the impetus for doing</p> <p>21 the study was to see if we couldn't improve upon</p> <p>22 any coordination settings to more properly or more</p> <p>23 effectively operate that system. And it turns out</p> <p>24 that there's very little that could be done based</p> <p>25 on the type of equipment that's there.</p> <p style="text-align: right;">Page 46</p>	<p>1 such as Electro-Tech or Eaton Cutler-Hammer to do</p> <p>2 those tests.</p> <p>3 MR. WOLFF: And then those companies</p> <p>4 would perform the electrical preventive</p> <p>5 maintenance testing and they would be using the</p> <p>6 applicable standards?</p> <p>7 MR. THOMA: Yes. Yes, I believe so.</p> <p>8 MR. WOLFF: There was problems with the</p> <p>9 controls also based on some of the documents that</p> <p>10 I read. Did you have a chance to review or</p> <p>11 troubleshoot some of these control problems that</p> <p>12 were discovered during, you know, the event?</p> <p>13 MR. THOMA: Could you clarify which</p> <p>14 control issues? I'm not understanding what --</p> <p>15 MR. WOLFF: That's the part where I'm</p> <p>16 confused myself because it was referenced to</p> <p>17 controls problem in the MCC and I wasn't too sure</p> <p>18 if they were talking about the -- you know, if it</p> <p>19 was VFD, verifiable frequency drive problems or</p> <p>20 other problems.</p> <p>21 MR. THOMA: Like I say, I did not look</p> <p>22 at any control issues or incidents, and I don't</p> <p>23 believe they were in any way a factor in the</p> <p>24 failure of that system.</p> <p>25 MR. WOLFF: When you were hired to</p> <p style="text-align: right;">Page 48</p>
<p>1 MR. WOLFF: And when you did this</p> <p>2 coordination study to verify the setting of the</p> <p>3 breaker, as you pointed out, you didn't have, you</p> <p>4 know, different settings that could inadvertently</p> <p>5 overlap, did this include the testing of the</p> <p>6 breakers beyond just performing the theoretical</p> <p>7 calculation?</p> <p>8 MR. THOMA: There was no testing done,</p> <p>9 no, sir. There has been no testing done. I'm not</p> <p>10 saying that there wasn't going to be or the</p> <p>11 district wasn't prepared to do that, but that</p> <p>12 hasn't been done as of yet.</p> <p>13 MR. WOLFF: Is it an industry standard</p> <p>14 practice or are there any ANSI standards that</p> <p>15 recommends preventative maintenance testing?</p> <p>16 MR. THOMA: Yes, there are. I can't</p> <p>17 cite them for you, sir, but yes.</p> <p>18 MR. WOLFF: And those standards would</p> <p>19 fall under NFPA standards, just like National</p> <p>20 Electric Code?</p> <p>21 MR. THOMA: I can't verify that, sir.</p> <p>22 MR. WOLFF: You performed preventive</p> <p>23 maintenance on facilities?</p> <p>24 MR. THOMA: We do perform preventive</p> <p>25 maintenance. We normally hire an outside firm</p> <p style="text-align: right;">Page 47</p>	<p>1 perform the study and you made in fact</p> <p>2 recommendation for addition of an arc flash study,</p> <p>3 was that performed?</p> <p>4 MR. THOMA: Arc flash study has yet to</p> <p>5 be performed. It was an option on our proposal,</p> <p>6 has not been performed by our firm.</p> <p>7 MR. WOLFF: When you reviewed the</p> <p>8 single line in the documents, have you had a</p> <p>9 chance to review the electrical preventative</p> <p>10 maintenance manual from this facility?</p> <p>11 MR. THOMA: No, I have not.</p> <p>12 MR. WOLFF: Were you asked to provide</p> <p>13 that service?</p> <p>14 MR. THOMA: No, I was not.</p> <p>15 MR. WOLFF: And so when you looked at</p> <p>16 the electrical equipment was there any type of</p> <p>17 labels or indication of, you know, tested by and</p> <p>18 dates?</p> <p>19 MR. THOMA: I believe there are test</p> <p>20 stickers on the main service equipment near and at</p> <p>21 the 1200 amp main on the main service equipment,</p> <p>22 MSE.</p> <p>23 MR. WOLFF: You don't recall the date</p> <p>24 of the test?</p> <p>25 MR. THOMA: I do not recall the date of</p> <p style="text-align: right;">Page 49</p>

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<p>1 the test, I'm sorry.</p> <p>2 MR. WOLFF: Okay. The standby</p> <p>3 generator, have you -- part of your services, did</p> <p>4 they include also a review of the emergency</p> <p>5 generator system?</p> <p>6 MR. THOMA: Not in particular. It is a</p> <p>7 part of and it's shown on a single line diagram,</p> <p>8 but I was not asked to review it. It was looked</p> <p>9 at as part of the coordination study when the</p> <p>10 single line diagram was furnished to Eaton</p> <p>11 Culter-Hammer for the coordination study.</p> <p>12 MR. WOLFF: That emergency standby</p> <p>13 generator has a transit switch?</p> <p>14 MR. THOMA: Yes, it does -- I'm sorry.</p> <p>15 The generator is the generator, the transfer</p> <p>16 switch is the transfer switch and it's located at</p> <p>17 the main switch gear. It's in the lineup of the</p> <p>18 switchboard. So it's the PG&E underground pole</p> <p>19 section, a meter, a CT section, the main circuit</p> <p>20 breakers, a transfer switch and distribution.</p> <p>21 MR. WOLFF: Okay. So part of that --</p> <p>22 you know, critical part of the system, did you</p> <p>23 have also any review or input on the maintenance</p> <p>24 that was performed and the condition of this</p> <p>25 critical piece of equipment?</p> <p style="text-align: right;">Page 50</p>	<p>1 breaker that tripped is downstream of the transfer</p> <p>2 switch, so when it tripped the generator could run</p> <p>3 all day long, it's not going to back up those</p> <p>4 pumps.</p> <p>5 MR. WOLFF: Yeah, because wasn't there</p> <p>6 a problem with the pumps that they were not</p> <p>7 running at full rpm, instead of running at 1800</p> <p>8 rpm one of the emergency pumps, to be specific,</p> <p>9 was only running at 1500 rpm?</p> <p>10 MR. THOMA: I have no knowledge of</p> <p>11 that. Are you talking about an electric pump?</p> <p>12 MS. MACEDO: I don't want to interrupt,</p> <p>13 but I believe Chairperson Wolff is talking about</p> <p>14 the emergency backup diesel pump and sort of the</p> <p>15 intermittent problems it had on the day of the</p> <p>16 spill, and you're referring to the generator. So</p> <p>17 I don't want you to be talking about two different</p> <p>18 things and maybe both be right and sort of be</p> <p>19 miscommunicating with each other. So I apologize.</p> <p>20 MR. THOMA: That's what I was</p> <p>21 wondering, maybe that was the diesel pump that was</p> <p>22 running at lower rpm's, not the pumps -- the</p> <p>23 influent pumps were off at the time so they</p> <p>24 weren't running.</p> <p>25 MR. WOLFF: Okay. All right. Well,</p> <p style="text-align: right;">Page 52</p>
<p>1 MR. THOMA: No, I was not, and as I</p> <p>2 understand it, it operated as it was supposed to</p> <p>3 have on the date of the event.</p> <p>4 MR. WOLFF: Well, wasn't there problems</p> <p>5 with the emergency generator? In some of the</p> <p>6 documents that I read there were problems with the</p> <p>7 generator being able to perform correctly, and</p> <p>8 please, you know, correct me if I'm mistaken</p> <p>9 because there was quite a bit of material to read</p> <p>10 and --</p> <p>11 MR. THOMA: It was my understanding</p> <p>12 that the generator -- there was an alarm at the</p> <p>13 generator location as there was water ponding in</p> <p>14 that area. And again, I don't know the details of</p> <p>15 the water or what the alarm was. That was -- my</p> <p>16 understanding that was the first place that the</p> <p>17 operators responded to as an alarm came in, that</p> <p>18 there was an issue there. When they got there</p> <p>19 they started the generator and it operated</p> <p>20 correctly, then they moved into the electrical</p> <p>21 equipment room where the next alarm was giving</p> <p>22 them some kind of an alarm. I do not recall what</p> <p>23 the alarm was that caused them to go in there, but</p> <p>24 the transfer switch in the main electrical</p> <p>25 building which is a different building. The</p> <p style="text-align: right;">Page 51</p>	<p>1 thank you for answering my questions.</p> <p>2 MR. YOUNG: One last question for you.</p> <p>3 This junction box that had the wires in it, is it</p> <p>4 your testimony that that box was properly designed</p> <p>5 and built and maintained to allow water to get</p> <p>6 into it from ponding and that that would be okay,</p> <p>7 that would not be an issue except for the lack of</p> <p>8 seals?</p> <p>9 MR. THOMA: I would say -- I wouldn't</p> <p>10 say that exactly, no. I wouldn't design a box to</p> <p>11 be ponded on top of. We would never intentionally</p> <p>12 design a box to be at the lowest level. My</p> <p>13 understanding is that in the year prior or maybe</p> <p>14 two years prior that that had been identified and</p> <p>15 that the box lid had actually been raised about</p> <p>16 two or three inches so it wasn't -- it was out of</p> <p>17 the ponding area, but the date of the event there</p> <p>18 was water flowing -- surface water flowing 6 to 12</p> <p>19 inches above the box. So even that that</p> <p>20 maintenance lid raising didn't adequately prevent</p> <p>21 water from getting into the box.</p> <p>22 Incidental water from rain and</p> <p>23 condensation and fog that was expected to be in</p> <p>24 the box outside. And that's why they're not</p> <p>25 sealed, you're just going to have -- so you do</p> <p style="text-align: right;">Page 53</p>

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<p>1 preventative measures, the bottom has to have a 2 drain in the bottom to seep out. And then if you 3 have a concern about it getting into the building 4 you should provide some type of a seal or air 5 gap. 6 MR. YOUNG: Okay. So if then you knew 7 you had a box that was subject to flooding at 8 times or inundation from water beyond incidental 9 moisture from either air or soil, would you take 10 other precautions? What would be the standard of 11 care in a situation like that? 12 MR. THOMA: Well, the standard of care 13 was that you probably would not want it to become 14 a drain, correct. And I believe prior to the 15 event the district had taken those precautions, 16 and I'm not sure of the date of that, but they had 17 identified that problem and the box lid had been 18 raised. I can't tell you exactly how many inches 19 above the ponded area, but that area had depressed 20 slightly. You'd have to talk to the civil 21 engineering experts about that, but my 22 understanding is they identified that, and the box 23 that was raised so that water wouldn't just run 24 into that box, and that was, I believe, prior to 25 the event.</p> <p style="text-align: right;">Page 54</p>	<p>1 wiring, some of it was probably the old RH wire, 2 cloth cover, older wire, which is now bordering on 3 50 years old. I can't say nor could any of the 4 district folks tell us for sure that that was the 5 subject of all of the issues that they had with 6 wiring, but the wiring that was installed in 1986 7 was all THW or XHHW, which were all wet locations 8 properly rated. 9 And I believe that the district over, 10 you know, the course of time, I think it's 11 Exhibit 51 kind of shows over time where they had 12 been replacing portions of the wire as projects 13 came along. You'll see this table kind of talks 14 about -- and it's difficult to see, but I believe 15 they show the wire sizes -- I mean, the wire types 16 and the dates that things were replaced. 17 This was when the wire was installed, 18 what the insulation types were. And the ones 19 that -- I think the GHHN, which is not a wet 20 location rated wire, you can see that they were 21 replacing many of those conductors, you know, 22 in -- back as early as 2006, 2009, and some of it 23 was since the event has occurred. 24 I'll also point out too you can't shut 25 the entire plant down and replace all of the wire,</p> <p style="text-align: right;">Page 56</p>
<p>1 MR. YOUNG: Do you know when? 2 MR. THOMA: I understood it was a 3 couple of years prior to December 19th of 2011. 4 MR. YOUNG: Where did you get that 5 information from? 6 MR. THOMA: In interviewing the Wallace 7 engineers as well as some testimony that I heard 8 from -- I believe it was Mr. Appleton that that 9 box had been raised. 10 MR. YOUNG: Okay. All right. 11 Dr. Wolff. 12 MR. WOLFF: I have one more question. 13 In testimony that were made, and I believe it was 14 Mr. Appleton, he referred to the degradation of 15 the wiring having caused a short at times, and 16 earlier in some of the questions made there was a 17 discussion about the replacement of the wiring. 18 And so in your investigation did you have an 19 opportunity to review some of the history of the 20 wiring problems and perhaps the troubleshooting 21 log? 22 MR. THOMA: I did not review the 23 troubleshooting logs. I have a bit of an 24 understanding, the plant was, as I understand it, 25 built in 1966 or thereabouts, so the original</p> <p style="text-align: right;">Page 55</p>	<p>1 so the district's process was to try to do it 2 incrementally as projects came along as well as to 3 do it when off-peak times of the year when the 4 systems could be down if we didn't have redundant 5 systems to take care of a pump, that if we had to 6 take a critical pump out of service we couldn't do 7 that during peak time or you had to do that during 8 scheduled maintenance. So the fact that you 9 couldn't just do it all at one time this was, you 10 know, a process that they were going through and 11 demonstrates that they were making progress on 12 that older wire. 13 MR. WOLFF: On the budget which was 14 around I think 2009, 2010 there was a budget to 15 upgrade the electrical system, and I believe part 16 of the upgrade was also the electrical wiring so 17 was there still some wiring that required 18 upgrades? 19 MR. THOMA: I would -- as of what 20 period of time, sir? 21 MR. WOLFF: Around 2009. 22 MR. THOMA: I think according to this 23 there were probably still some occasions where the 24 older wiring still existed, correct. 25 MR. WOLFF: All right. Thank you.</p> <p style="text-align: right;">Page 57</p>

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1 MR. YOUNG: Okay.
2 MS. THORME: Can I do a couple of
3 redirect?
4 MR. YOUNG: Sure. Go ahead.
5
6 REDIRECT EXAMINATION
7 BY MS. THORME:
8 **Q. Mr. Thoma, so that Exhibit A that you**
9 **had up there, those were the design schematics**
10 **from 1986; is that correct?**
11 A. That's correct.
12 **Q. Okay. So you testified that they**
13 **designed this to include seals, was that what I**
14 **heard?**
15 A. That's what the construction documents
16 show, correct.
17 **Q. Okay. So the thought would have been**
18 **that when they constructed that plant in 1986 that**
19 **somebody would have actually installed those**
20 **seals, right?**
21 A. Correct, and would have been
22 inspected.
23 **Q. So then someone besides the district,**
24 **the county or some other entity is supposed to**
25 **come and inspect?**

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1 A. Normally there will be either a county
2 inspector or a deputy inspector.
3 **Q. Okay. Would it be easy to tell right**
4 **away that these weren't there?**
5 A. I would say so.
6 **Q. I mean, just looking at --**
7 A. Yes.
8 **Q. You could walk by and look and see that**
9 **they weren't there? I mean, you would notice that**
10 **on a normal day?**
11 A. You mean after the construction's
12 complete.
13 **Q. Yes, after it's complete.**
14 A. Not necessarily.
15 **Q. Okay. And as far as you're aware were**
16 **there any problems with the fact that there were**
17 **no seals since 1986 until this event occurred?**
18 A. It's my understanding that there were
19 no problems prior to this event.
20 **Q. And were the construction design from**
21 **1996, was all that wire supposed to be the**
22 **waterproof wire for the newer construction?**
23 A. From 1986?
24 **Q. Yes.**
25 A. Yes.

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1 **Q. Okay. So most of the rewiring was for**
2 **the 1960 to 1986 construction?**
3 A. I can't speak to what the intent was,
4 but that would be my intent if I was doing that
5 because the other wire was only 17 years old and
6 it was all properly rated.
7 **Q. Okay. And then you had talked about**
8 **how these boxes are designed that they can have**
9 **water in them and that they drain; is that**
10 **correct?**
11 A. Normally it would drain through a hole
12 in the bottom or if there's a physical drain that
13 goes between boxes and maybe a sump pump. I can't
14 speak to that specifically. I do know that there
15 was in the original construction documents
16 identified a conduit between boxes and it was
17 No. 999 on the conduit schedule. There was a two
18 and a half inch conduit that was near the bottom
19 of the box to allow for the water to drain out.
20 **Q. And then I think that you had mentioned**
21 **things that had happened since the spill, that the**
22 **conduits have now been rerouted over the walls?**
23 A. Correct.
24 **Q. And has the shunt trip switch that was**
25 **the problem now been separated so that it only**

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1 **controls two pumps at a time instead of all**
2 **four?**
3 A. I do not know that that work has been
4 completed. I understood that that work might be
5 taking place so that they would isolate those
6 shunt trip switches so to minimize the exposure.
7 I don't know that the work has actually taken
8 place personally. It was anticipated to be done,
9 it was a suggestion that we made.
10 **Q. And then I think that you had talked**
11 **about the boxes being raised?**
12 A. Right.
13 **Q. Would this be that kind of work that**
14 **they're now above grade?**
15 A. Right. See the ramp out here to the
16 lid of the box, this is where an extension ring
17 was placed on the top of the box to raise it,
18 looks like about four inches. And then a concrete
19 ramp, you know, to prevent a trip hazard and then
20 the lid goes inside of that box. So it was raised
21 to prevent ponding water getting in there that
22 would just run right in. Incidental water could
23 get in, but during the event of the 19th the water
24 was 12 inches above that at the surrounding
25 territory. There's a four inch box extension

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1 didn't provide the --
2 MS. JAHR: Correction.
3 MS. THORME: That's Exhibit 71.
4 MS. JAHR: I wanted to show you the
5 front page. I wanted to show the picture first.
6 This is Exhibit 71 and the date on that is --
7 MS. THORME: 2007. I think Mr. Young
8 had asked a time frame. So thank you very much,
9 Mr. Thoma.
10 MR. YOUNG: Any re-cross?
11 MS. MACEDO: No.
12 MR. YOUNG: Okay. Thank you very much,
13 Mr. Thoma. All right. Now we will go back to the
14 prosecution team's case in chief.
15
16 DIRECT EXAMINATION
17 (Gerald Horner)
18 BY MS. MACEDO:
19 **Q. Sure. We're going to go slightly out**
20 **of order and call Mr. Horner. We had a ruling**
21 **yesterday that Mr. Horner was allowed to testify**
22 **to make sure some exhibits got into the record.**
23 **So he drove from Sacramento yesterday, which we**
24 **appreciate. Good morning, Mr. Horner.**
25 A. Good morning. My name is Gerald

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1 Horner. I'm the chief economist for the State
2 Water Resources Control Board. My address is
3 1319 H Street, Sacramento, California 95814.
4 **Q. And how long have you worked with the**
5 **Water Board?**
6 A. I've worked with the Water Board for
7 over 11 years.
8 **Q. What is your title with the Water**
9 **Board?**
10 A. I am the senior economist for the Water
11 Board.
12 **Q. And I know you helped me and the rest**
13 **of the prosecution team in a number of ways, and**
14 **we're going to cover a couple of topics. Let's**
15 **start with the foundation of a number of exhibits.**
16 **You assisted the prosecution team with**
17 **Exhibits 18, 109 and 113. Those are exhibits that**
18 **concern the economic benefits that we believe was**
19 **received by the district in this matter. Do you**
20 **recall those exhibits?**
21 A. Yes, I do.
22 **Q. Okay. And are they true and correct**
23 **copies of what they purport to be?**
24 A. Yes, they are.
25 **Q. Okay. Ms. Thorme may have questions**

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1 **about the economic benefit and how it was derived,**
2 **but I'm going to proceed directly to ability to**
3 **pay if you don't mind.**
4 A. That's fine.
5 **Q. Have you ordinarily conducted an**
6 **ability to pay analysis?**
7 A. Yes. In every case we usually require
8 a method analysis benefit of noncompliance and
9 also an ability to pay analysis.
10 The ability to pay analysis is usually
11 done by first requesting the comprehensive annual
12 financial report from the district that gives us a
13 set of financials, according to a prescription
14 that has been agreed to by the accountants that do
15 this type of work. That has been -- was requested
16 and we did not receive the comprehensive annual
17 financial report from the district, so therefore
18 we did not conduct a formal ability to pay on the
19 initial June 27th submission in chief.
20 **Q. Okay. But we did at the time that the**
21 **district submitted its materials receive audited**
22 **financial statements; isn't that correct?**
23 A. Yes, we did.
24 **Q. So we were able to do an ability to pay**
25 **analysis at that time?**

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1 A. Yes, we did.
2 **Q. What did it reveal?**
3 A. The ability to pay of the district is
4 adequate to cover the proposed ACL without any
5 kind of impact on the ratepayers.
6 **Q. And how did you come to that**
7 **conclusion?**
8 A. The conclusion was derived from the
9 financial reports that were submitted for fiscal
10 years ending in June 30th, 2010, fiscal years
11 ending June 30th, 2009, and the fiscal report for
12 the fiscal year June 30th, 2008.
13 In those reports there is a substantial
14 amount of unencumbered cash and cash equivalents
15 held by the district that is free to be used with
16 contingency expenses for the district.
17 **Q. When you say "substantial amount," what**
18 **amount are we talking about?**
19 A. For the years 19- -- fiscal year ending
20 2010 it is \$5,125,000. For the year ending in
21 2009 it's \$5.8 million, and for the fiscal years
22 ending of 2008 it was \$6.9 million. This is
23 substantially more than what is typically retained
24 in this type of an account.
25 **Q. Okay. So I want to make sure, I'm not**

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<p>1 an economist, I want to make sure I understand you</p> <p>2 correctly.</p> <p>3 The most recent financial documents</p> <p>4 submitted to us that ends with fiscal year 2010</p> <p>5 indicates a \$5 million surplus?</p> <p>6 A. Surplus.</p> <p>7 Q. Okay.</p> <p>8 A. Yes.</p> <p>9 Q. So that is not indicating that there is</p> <p>10 bills to be paid, that's not reflected on a budget</p> <p>11 an outstanding income and assets, that's a</p> <p>12 \$5 million surplus?</p> <p>13 A. That is correct.</p> <p>14 Q. Okay. Is that money unencumbered?</p> <p>15 A. That is correct.</p> <p>16 Q. Is that money liquid?</p> <p>17 A. It is. Some of it is held, but it's</p> <p>18 not -- in a perusal of the account, it is not held</p> <p>19 nothing more than 90 days, so it's liquid in</p> <p>20 90 days.</p> <p>21 Q. Okay. Now, in one of the documents we</p> <p>22 talked a little bit about wastewater treatment</p> <p>23 rates and, you know, so it's your conclusion that</p> <p>24 based on this \$5 million surplus that the district</p> <p>25 can pay the full penalty recommended by the</p> <p style="text-align: right;">Page 66</p>	<p>1 Q. Okay. And what input did you use for</p> <p>2 this document?</p> <p>3 A. When we started this I normally go</p> <p>4 through with the technical people that are</p> <p>5 assigned to this project, if there is any</p> <p>6 indication of any kind of either practice or any</p> <p>7 kind of a program that should have been purchased</p> <p>8 that could have prevented the spill and also</p> <p>9 whether it was out of compliance.</p> <p>10 We found -- I found in the fiscal year</p> <p>11 budget of 2004, 2005 a proposal for an electrical</p> <p>12 system upgrade. And my decision was to use or to</p> <p>13 indicate that this upgrade would have significant</p> <p>14 effect on prevention of the spill. And let me --</p> <p>15 I base this on the following description that was</p> <p>16 prepared by the district.</p> <p>17 The original electrical system was</p> <p>18 installed in 1964 and 1966 as part of the</p> <p>19 construction of the plant. Additional electrical</p> <p>20 equipment and wiring was installed in 1986. The</p> <p>21 wiring that connects the various motors with the</p> <p>22 motor control center located in the power</p> <p>23 generation plant has deteriorated over the years</p> <p>24 due to being submerged by groundwater. The</p> <p>25 existing wiring is not designed for this type of</p> <p style="text-align: right;">Page 68</p>
<p>1 prosecution team without passing it on to the</p> <p>2 ratepayers, but based on the wastewater treatment</p> <p>3 rate what was your analysis of the rates, are they</p> <p>4 fair based on a consideration of other wastewater</p> <p>5 rates around the area?</p> <p>6 A. The rates that are currently being paid</p> <p>7 by the district is about \$16 a month for a</p> <p>8 residence. \$16 a month is a lot less than what</p> <p>9 the average rates that are paid in the State of</p> <p>10 California. The average rates are about \$26 a</p> <p>11 month.</p> <p>12 MS. MACEDO: All right. Subject to</p> <p>13 redirect I don't have any further questions of</p> <p>14 this witness.</p> <p>15 MR. YOUNG: Go ahead.</p> <p>16</p> <p>17 CROSS-EXAMINATION</p> <p>18 BY MS. THORME:</p> <p>19 Q. Exhibit 18, please. So Mr. Horner,</p> <p>20 this is Exhibit 18 which was the Ben results that</p> <p>21 were provided to us in the prosecution team's</p> <p>22 evidence. Have you seen this document before?</p> <p>23 A. I have.</p> <p>24 Q. Did you prepare this document?</p> <p>25 A. I did.</p> <p style="text-align: right;">Page 67</p>	<p>1 service, and as a result there has been several</p> <p>2 instances where the wiring has failed and either</p> <p>3 caused an electrical fire or loss of power.</p> <p>4 This project will replace all of the</p> <p>5 wiring to the various motors and lighting in the</p> <p>6 plant with waterproof wiring that is rated for</p> <p>7 this type of service. In order to keep the plant</p> <p>8 operating during this process the wiring will be</p> <p>9 replaced in a sequenced fashion with one set of</p> <p>10 wires replaced at a time. In addition, as-built</p> <p>11 drawings will be created.</p> <p>12 And it was my judgment at that time had</p> <p>13 that project been undertaken in 2004 or after 2005</p> <p>14 it would have had a significant effect not only in</p> <p>15 upgrading the electrical system but to uncover</p> <p>16 other problems that were in existence in this</p> <p>17 vault.</p> <p>18 Q. So Dr. Horner, were you given the</p> <p>19 district's evidence when we submitted it to</p> <p>20 review?</p> <p>21 A. Yes.</p> <p>22 Q. Did you review Mr. Thoma's</p> <p>23 declaration?</p> <p>24 A. No, I did not.</p> <p>25 Q. Did you hear Mr. Thoma's testimony</p> <p style="text-align: right;">Page 69</p>

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1 today?
2 A. I did.
3 Q. Does that change your mind at all as
4 to --
5 A. No.
6 Q. -- whether that wire -- can I finish
7 question, please?
8 A. No.
9 Q. Can I finish the question, then you
10 answer it.
11 So does that not change your mind that
12 this initial 2004 budget item would not have made
13 a difference?
14 A. No.
15 Q. Were you aware of the rewiring projects
16 in Exhibit 51 that we had up on the board?
17 A. Yes, I am.
18 Q. And that doesn't change your mind
19 either?
20 A. This was done in June -- I did this --
21 performed this in June.
22 Q. I understand.
23 A. Okay. All right. Prior to the
24 submission of that evidence.
25 Q. I understand.

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1 A. Okay.
2 Q. But if your mind has been changed and
3 the Ben model needs to be rerun, that's what the
4 question I'm asking you, has there been any change
5 in your thought process that would modify the Ben
6 model?
7 A. Yes, there is.
8 Q. Okay.
9 A. If I had to do it over again, I
10 certainly would look at a number of factors that
11 led or possibly led to this occurrence. I think
12 the pump discharge valve I think needed to be --
13 could be a cause. The emergency pump, the leaky
14 influent gate, headworks had problems and then,
15 again, there was probably other electrical issues
16 that will be discussed -- or were discussed this
17 morning.
18 I would do a more detailed
19 investigation on those issues and determine what
20 the compliant costs were at the time that that
21 should have been done to determine the spill.
22 Q. So my understanding you would make the
23 number bigger and not smaller?
24 A. I think this right here is a very, very
25 conservative estimate of the benefit of

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1 noncompliance.
2 Q. Okay. Where did the \$5,000 estimate
3 come for the one-time nondepreciable expenditure
4 come from?
5 A. Well, that will be discussed later, but
6 it was for some minor -- very, very minor expenses
7 that were not done at the time of the spill.
8 Q. You don't know what those things
9 were?
10 A. Well, I can't really remember right now
11 what they were.
12 Q. Okay. What is the basis for your
13 allegation that the costs were tax deductible?
14 A. No, the tax status is a municipality.
15 If you can -- right down there on the fifth line
16 there it says, "Tax rates in municipality which
17 pays no taxes." So it's not depreciable.
18 Q. Where did you come up with the discount
19 rate?
20 A. The discount rate in the Ben model is
21 determined by the type of entity that you are, and
22 from municipalities the average bond rate is used
23 as the discount rate.
24 Q. What is that percentage?
25 A. For this particular case it is

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1 4.5 percent.
2 Q. Okay. And do you know what the prime
3 rate interest rate is right now?
4 A. Prime interest for commercial lending?
5 Q. Yes.
6 A. Is about 7 and a half percent,
7 9 percent.
8 Q. Okay. All right. And where did you
9 come up with the useful life estimate of
10 15 years?
11 A. 15 years is pretty typical on this type
12 of an installation.
13 Q. What is the rate for SRF loan funding,
14 state revolving fund loans?
15 A. Right now it's about 2.5.
16 Q. And how did you select the probable
17 payment date of 9/1/12?
18 A. That was in June, and counsel said that
19 that was a probable date of settlement.
20 Q. Okay. All right. Can we pull up
21 Exhibit 39, the last page, please. So this is the
22 shunt trip receipt for payment. So to make the
23 change to install the seal in the middle of the
24 page is cut in EYS on shunt trip controls, the
25 actual cost to fix that was approximately \$500.

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19 (Pages 70 to 73)

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1 **Was that in your analysis?**
2 A. No.
3 **Q. Okay. And can we go to Exhibit 98,**
4 **please, which is the declaration of Aaron Yonker,**
5 **it's Exhibit B on the financial information.**
6 **Okay. So these funds here that are in the middle,**
7 **were these the numbers that you used for**
8 **determining there was a \$5 million surplus?**
9 A. I don't recognize that at all.
10 **Q. So what numbers were you looking at to**
11 **determine there was a \$5 million surplus?**
12 A. Okay. This report is entitled the
13 independent auditor's report and financial
14 statements for the years ending -- or for the year
15 ending June 30th, 2010 for the South San Luis
16 Obispo County Sanitation District.
17 **Q. Do you know whether that was evidence**
18 **in this case as part of an exhibit?**
19 A. It was submitted I think by the
20 discharger.
21 **Q. That wasn't my question. My question**
22 **is did the board members have that evidence?**
23 A. I don't know.
24 **Q. I don't believe that they do.**
25 A. Oh, okay.

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1 **Q. So was there any evidence in the**
2 **exhibits that were presented to the regional board**
3 **that would show what you're claiming to be a**
4 **\$5 million surplus?**
5 A. If you say no, no, there isn't.
6 **Q. So if you look at this information,**
7 **which was presented in evidence to the board**
8 **members, this is the -- as of July 1st, 2012 these**
9 **are the balances. So there's operating fund**
10 **balance, which is negative, an expansion fund**
11 **which are sewer connection fees that cannot be**
12 **touched under the government code, replacement**
13 **fund to total \$3.7 million, where do you find a**
14 **\$5 million surplus in there?**
15 A. The ability to pay analysis is based on
16 a US EPA model, it's a computer model for
17 determining the financial status of a district.
18 And it uses the standard financial statements
19 called the balance sheet, the income report and a
20 cash flow statement. The basis -- the first basis
21 for ability to pay is cash and cash flows which
22 comes from the financial report.
23 Now, the last report that was submitted
24 by the district was the fiscal year ending
25 June 30th, 2010. If there were adequate reports

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1 that were prepared after that date we did not see
2 them. If that is a 2012 document it is
3 immaterial, because, one, I would probably guess
4 that is probably a budget; is that correct?
5 **Q. I am not testifying today.**
6 A. Well, can I see the title page for
7 that?
8 **Q. This is attached to Mr. Yonker's**
9 **declaration. This was evidence that was provided**
10 **with the district's -- our case in chief,**
11 **essentially. So you weren't given this to**
12 **review?**
13 A. I have seen this. Okay. And this is
14 not germane to ability to pay.
15 **Q. So cash on hand and ability to get the**
16 **money is not relevant to whether someone can**
17 **pay?**
18 A. Well, your cash on hand comes from your
19 financial statements, from your balance sheet.
20 That is not a balance sheet.
21 **Q. But doesn't it directly reflect to how**
22 **much money you have in the bank?**
23 A. That does not show a complete
24 picture.
25 **Q. Okay. So at the bottom, the table that**

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1 runs over into two pages, she can put both of them
2 up so we can see both, so this is as of the
3 revenues and expenditures for the coming year,
4 which would be this fiscal year that we would
5 actually -- the district would have to pay the
6 penalty, so revenues minus expenditures. And then
7 we see on there if this liability, which has now
8 been raised, had to be paid it would leave a
9 negative amount for the district to run the
10 treatment plant. How does that not reflect
11 ability to pay?
12 A. Because your expenditures listed as
13 fiscal year 2010-13 expenditures probably
14 include -- there's no detail on this number, but I
15 am guessing that that has a substantial amount of
16 depreciation. Depreciation is a non-cash cost.
17 **Q. But what about major budget items that**
18 **have been scheduled that need to be done and if**
19 **they're not done then we'll back in another**
20 **hearing?**
21 A. Okay. You asked me about that
22 number.
23 **Q. Right.**
24 A. And I'm saying that that number -- I
25 have looked at your audited financial statements

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20 (Pages 74 to 77)

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1 and your revenues exceed your expenditures in
2 every given year. You do not have an income
3 problem in the district.
4 **Q. But the last ones that you looked at**
5 **you're relying on 2010 and we're two years later**
6 **than that now.**
7 A. That's right.
8 **Q. Because the audited forms for 2011**
9 **aren't due yet or haven't been done yet.**
10 A. For 2011 --
11 **Q. Or you don't have them.**
12 MS. MACEDO: They were provided.
13 THE WITNESS: The last I saw was
14 2010.
15 BY MS. THORME:
16 **Q. Okay. Where is your evidence that**
17 **there is depreciation contained in those**
18 **balances?**
19 A. Well, I can show you -- for these?
20 **Q. Yes.**
21 A. Yes, I can if you want to see it.
22 **Q. Well, if it's a document that's not in**
23 **evidence we have to put it into evidence. This is**
24 **two years old.**
25 MS. MACEDO: That's the latest you

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1 provided; so --
2 MR. YOUNG: If he's referring to this
3 document, is this in evidence?
4 MS. MACEDO: It's not.
5 MR. YOUNG: Why don't we mark it.
6 MS. THORME: Yeah, we should mark it.
7 MR. YOUNG: Do you have a problem?
8 MS. MACEDO: I don't have any objection
9 to it being marked as evidence as long as the
10 district doesn't.
11 MR. YOUNG: Is this a district
12 document?
13 MS. THORME: I believe so, yes.
14 MS. MACEDO: It is.
15 MR. YOUNG: Okay. So let's mark it.
16 MS. MACEDO: Okay. It will be
17 Exhibit 114.
18 MS. THORME: Yes.
19 MS. MACEDO: It's the whole 2010 fiscal
20 audited response?
21 MR. HORNER: It is the independent
22 auditor's report and financial statement for the
23 South San Luis Obispo County Sanitation District
24 for the year ending June 30th, 2010.
25 /////

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1 BY MS. THORME:
2 **Q. And so are any of the funds that you**
3 **are looking at in fund balance 19 -- actually, can**
4 **you go back to the earlier table? So which fund**
5 **balance were you looking at that had additional**
6 **cash in it?**
7 A. Okay. This document is not the
8 document that is used to determine ability to pay.
9 The ability to pay is determined by the financial
10 statements of the district which you have said are
11 not completed yet for 2011, and they're also not
12 completed for 2012.
13 **Q. Right. Well, the fiscal year just**
14 **ended fairly recently for 2012.**
15 A. That's right.
16 **Q. But my question goes to which fund**
17 **balance -- the district has dedicated funds that**
18 **are for certain things and certain of those funds**
19 **cannot be touched under law.**
20 A. I did not look at any of those.
21 **Q. Okay. So if --**
22 A. I did not consider them.
23 **Q. So if that money, the \$5 million that**
24 **you were looking at was in a restricted fund that**
25 **couldn't be used for this purpose how does that**

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1 **affect your ability to pay analysis?**
2 A. Okay. For the fiscal year ending
3 June 30th, 2010, the current assets, cash and cash
4 equivalence \$5,190,955, that's where I got that.
5 **Q. Okay. But what I'm saying is you have**
6 **to look at each of those funds to see where the**
7 **money is because under the government code certain**
8 **funds that come from sewer connection fees have to**
9 **be deposited in a separate fund and can only be**
10 **used for the purposes that those charges were**
11 **collected. So they are restricted under law and**
12 **cannot be used to pay a penalty which is not the**
13 **purpose that they were collected for. So my point**
14 **is if you're looking at money that's in a**
15 **restricted fund it cannot be used for ability to**
16 **pay. And you didn't -- you didn't consider that**
17 **when you're looking at the \$5 million surplus.**
18 A. I did.
19 **Q. How did you?**
20 A. Those funds are not included in the
21 cash and cash equivalence. Those funds are
22 separate. Those funds are kept clear by law.
23 There is a clear statement about proprietary funds
24 and those that are restricted by law not to be
25 touched, but it's very clear when your financial

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21 (Pages 78 to 81)

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1 statement that your cash and cash equivalence,
2 accounts receivable, interest receivable and
3 prepaid expenses are substantial. None of those
4 are restricted by any -- any rules or any laws.
5 Those are liquid, those are kept in interest
6 bearing accounts of no more than 90 days.
7 **Q. Okay. But this --**
8 MR. YOUNG: Excuse me, can I just ask
9 him a question because it's --
10 MS. THORME: Yes. Certainly.
11 MR. YOUNG: Mr. Horner, where then
12 would the funds that you're referring to that are
13 designated and separate, where do they appear in
14 that analysis or on this table?
15 MR. HORNER: They are in separate -- in
16 separate accounts that are identified in
17 proprietary accounts, but they're not in the
18 financial statements. These are the statements by
19 law that must be accounted for in those
20 categories. They are not proprietary funds. We
21 don't look at proprietary funds. So we don't --
22 we are aware of them, but I don't -- I have no
23 interest in proprietary funds.
24 MR. YOUNG: So this is a balance sheet,
25 correct?

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1 MR. HORNER: This is a balance sheet,
2 yes.
3 MR. YOUNG: So it's not identifying or
4 recognizing all of the district's assets, is that
5 what you're saying?
6 MR. HORNER: Yes.
7 MR. YOUNG: It is other assets that are
8 not on this balance sheet?
9 MR. HORNER: Yes. Those proprietary
10 funds, yes, that they're nontouchable.
11 MR. YOUNG: Okay. Go ahead.
12 BY MS. THORME:
13 **Q. Well, I just want to say we're at a**
14 **little bit of a disadvantage because this wasn't**
15 **put in as evidence that we were preparing for**
16 **today. So I haven't had a chance to look at this**
17 **or know where it came from or anything. So I just**
18 **want to get that on the record that we're working**
19 **at a little bit of a disadvantage. We'll try to**
20 **have district people testify to this later in the**
21 **day, but this -- just for the point, this is 2010,**
22 **we're now two years later and as everyone knows**
23 **your financial situation can change very quickly.**
24 **And so if there was a need to go out to raise**
25 **rates in order to pay this penalty are you aware**

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1 **of the restrictions on a district that you cannot**
2 **just raise rates, that you actually have to go out**
3 **to a vote under Proposition 218 and Prop 226**
4 **before you can raise rates?**
5 A. Yes, I am.
6 **Q. Is it a sure thing that you're going to**
7 **be able to raise rates?**
8 A. No, it's not. However, with this
9 amount of cash sitting on the books, there is no
10 way you should have to go to raise rates.
11 **Q. But that was sitting on the books two**
12 **years ago?**
13 A. Right.
14 **Q. Now, if we can move to your Exhibit 109**
15 **which was the document that you submitted with**
16 **your rebuttal. All right. In this document you**
17 **said that there were illegal competitive**
18 **advantages that you were looking at. Can you**
19 **explain to me how a municipality can have an**
20 **illegal competitive advantage?**
21 A. This response was prepared to the
22 objection that was raised concerning the
23 Ben model. And the fact that the Ben model was
24 controversial --
25 **Q. Okay. But wasn't the Ben model --**

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1 A. Excuse me. Can I finish?
2 **Q. Oh, I'm sorry.**
3 A. The Ben model is controversial, there's
4 no question about it. Because it is used
5 nationally against major corporations. They have
6 prepared a number of arguments to challenge the
7 way that we discount, the way that we compound our
8 interest and this illegal competitive advantage,
9 which does not pertain to this case.
10 **Q. Right. So municipalities are a little**
11 **bit different than when you're using this model**
12 **for a corporation that actually makes money?**
13 A. That's correct.
14 **Q. Okay. You also talked on the second**
15 **page of your document that there were five**
16 **alternative inflation rates that have been built**
17 **into the model and that default discount rates can**
18 **be overridden by the user. How are we to know**
19 **from the black box whether you're overriding,**
20 **whether you're using a standard, how is someone to**
21 **know just from the output what was the input?**
22 A. First, this is not a black box. The
23 Ben model is nothing more than an Excel
24 spreadsheet. The Excel spreadsheet is distributed
25 with every download for the Ben model, it's a

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22 (Pages 82 to 85)

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1 standard, stand-alone calculated. The input for
2 the Ben model is printed out. Now, I think -- I'm
3 not sure if we had an exhibit or a slide, but I
4 can certainly show it to you.
5 MS. MACEDO: I can get it.
6 MR. HORNER: In here is a description
7 of the inflaters that are used for a particular
8 expenditure or capital cost that should have been
9 used for compliance. And I can certainly go
10 through those with you if you'd like. I can
11 describe them. It's listed --
12 MR. YOUNG: Before we do that -- how
13 are you doing?
14 (Discussion off the record.)
15 MS. MACEDO: He's talking about 18.
16 MS. THORME: Okay.
17 MS. MACEDO: If that helps.
18 MS. THORME: Which we had up before.
19 MS. MACEDO: Yes. You have it. There
20 you go. Is that what you want, Gerry? The first
21 page?
22 MR. HORNER: That one right there. And
23 that's the standard input sheet that's printed out
24 and indicates what all the assumptions that were
25 used in the analysis.

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1 BY MS. THORME:
2 **Q. Okay. So also if we can go back to**
3 **Exhibit 109 to the second page. At the bottom you**
4 **were saying that the 2012, 2013 adopted budget**
5 **cannot be used to determine fund balance for the**
6 **district. What's your basis for that statement?**
7 A. Budgets have no rule.
8 **Q. But that's how the district functions,**
9 **they work off of a budget and --**
10 A. It's a planning document.
11 **Q. But it's also based on reality of what**
12 **the money is in the bank at the beginning of the**
13 **budget and how they're going to spend it.**
14 A. Could be. There's no checks and
15 balances on budgets, never has been, never will
16 be.
17 **Q. Right. But that's the way a public**
18 **entity functions. They don't function two years**
19 **ago on the audited documents, they're functioning**
20 **day to day on what's in the bank.**
21 A. And I have to do my analysis based on
22 what was and what is currently.
23 **Q. Okay.**
24 A. Not on what will be.
25 **Q. You also said that many dischargers are**

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1 **required by California law to prepare a**
2 **comprehensive annual financial report and you**
3 **cited sections of the government code. Do you**
4 **know whether those sections apply to the**
5 **district?**
6 MS. MACEDO: I'll object that it calls
7 for a legal conclusion.
8 MS. THORME: You can answer.
9 MS. MACEDO: You can say I don't
10 know.
11 MR. HORNER: I'm confused.
12 MR. YOUNG: Then don't say anything
13 until we --
14 MS. THORME: Well, he was putting these
15 legal arguments into his document, so he obviously
16 had a thought that this applied.
17 MR. YOUNG: I think you asked him
18 whether certain government code sections apply.
19 MS. THORME: That's what I asked is
20 whether those apply to the district.
21 MR. YOUNG: I think it's fair to ask
22 him the question. Go ahead.
23 MR. HORNER: Well, it was my opinion
24 that every district should be using a
25 comprehensive annual financial report.

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1 BY MS. THORME:
2 **Q. That's different than whether these**
3 **code sections apply to the district.**
4 A. The code sections are strongly
5 suggested. Okay. They're not mandatory.
6 **Q. And do you know whether those only**
7 **apply to county governments?**
8 A. They apply across the board. Any
9 public agency should be using a comprehensive
10 annual financial report format.
11 **Q. That wasn't my question. My question**
12 **was does this code section specifically apply to**
13 **county sanitation districts?**
14 A. I don't know.
15 **Q. Okay. And you said that there**
16 **shouldn't be any impact to ratepayers and that was**
17 **based on your analysis that there's \$5 million in**
18 **surplus; is that correct?**
19 A. That's correct.
20 **Q. But if rates had to be raised to pay**
21 **this penalty there would be an impact to the**
22 **ratepayers; is that correct?**
23 A. Could you ask that question again?
24 **Q. If the district had to raise its rates**
25 **in order to pay this penalty, would that be an**

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23 (Pages 86 to 89)

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1 **impact to the ratepayers?**
2 A. If the rates were increased it would be
3 a direct impact to the ratepayers, yes.
4 **Q. And when you were considering the rates**
5 **of the district the only thing that was provided**
6 **by the prosecution team in evidence was**
7 **Exhibit 113 which were rates from 2006 to 2008,**
8 **were those the rates that you considered?**
9 A. No.
10 **Q. So you were considering other rates**
11 **that were not in evidence in this case?**
12 A. No, the rates were effective in 2010.
13 **Q. Okay. But the prosecution team did not**
14 **put those into evidence?**
15 A. I don't --
16 **Q. To be clear, which ones?**
17 A. I don't know. But it's directed -- it
18 came from the district and it's your rate schedule
19 that currently exists in the district.
20 MS. THORME: Okay. All right. No
21 further questions.
22 MS. MACEDO: Do you want to take board
23 questions?
24 MR. YOUNG: Do we have board questions?
25 We do. All right. Let's take a break first.

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1 (Recess taken.)
2 MR. YOUNG: Just a couple of
3 housekeeping matters to take care of, then we'll
4 break for lunch. I received a request for one or
5 two of the public comment speakers that have a
6 time crunch that would like to speak earlier in
7 the day, and I'm going to grant that. Here's the
8 trade-off: If you were to speak at the end of the
9 day you get three minutes, if I take you out of
10 order now you'll have two minutes. That's just a
11 trade-off I'm going to do. So Can I see a show of
12 hands so I get an idea of how much time I'm going
13 to need for those that want to give up their
14 minute and speak, I'll take you before we break
15 for lunch. I see one, two, three. So those three
16 we'll take before we break for lunch, just those
17 three at this point.
18 And then we just wanted to let counsel
19 know, Melissa and Julie, what we're going to do, I
20 just want to make sure you're aware, we admitted a
21 number of documents as hearsay documents. We're
22 going to rely on you, both of you, if there is a
23 document that you want admitted under a hearsay
24 exception we're going to need to lay the
25 foundation and make sure we're aware of it which

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1 you're going to offer for the truth of the matter
2 asserted. Okay?
3 MS. THORME: Yes. I just have one
4 clarifying question because Board Member Wolff was
5 referring earlier to Mr. Appleton's testimony,
6 which was one of the documents that was excluded
7 as evidence.
8 MR. YOUNG: Okay.
9 MS. JAHR: Right. We will -- the board
10 members will not be relying on any exhibit unless
11 it is used for those purposes.
12 MS. THORME: Thank you.
13 MR. YOUNG: Okay. All right. So we
14 will continue with Mr. Horner. And let me ask you
15 something. Were you waiving your redirect?
16 MS. MACEDO: No, I'm happy to do it now
17 or I'm happy to do it after board member
18 questions.
19 MR. YOUNG: Okay. Why don't you do it
20 now.
21
22 REDIRECT EXAMINATION
23 BY MS. MACEDO:
24 **Q. Sure. So to the extent we should just**
25 **clear the record, we've placed in front of**

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1 **everyone a document that was submitted by the**
2 **district that has been Bates stamped SLO 02503**
3 **through SLO 02537. And Mr. Horner, do you have**
4 **these documents in front of you?**
5 A. Yes, I do.
6 **Q. For the record I believe they are the**
7 **independent auditor's report and financial**
8 **statements for the years ending 2009, 2008, and**
9 **then if you turn to Page 02520 that is the**
10 **financial statement for the year ending June 30th,**
11 **2010.**
12 A. That's correct.
13 **Q. Okay. And this is where you had**
14 **interacted with Ms. Thorme about the \$5 million**
15 **surplus, correct?**
16 A. That's correct.
17 **Q. And you were assisting me with the**
18 **preparation of our rebuttal materials, you**
19 **prepared a couple of documents that we submitted,**
20 **our rebuttal materials including documents 108 and**
21 **113. These documents were submitted and you have**
22 **the opportunity to review them. They have not --**
23 **the district has not prepared -- or excuse me, the**
24 **district has not submitted any more recent**
25 **financial statements?**

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24 (Pages 90 to 93)

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1 A. That's correct.
2 **Q. And Ms. Thorme showed you Mr. Yonker's**
3 **declaration and some excerpts from that about a**
4 **proposed budget and where their money is and how**
5 **they have an inability to pay. Do you recall**
6 **that?**
7 A. Yes.
8 **Q. And you testified briefly about the**
9 **difference between a budget and an audited**
10 **financial statement?**
11 A. That's correct.
12 **Q. And it is your opinion that the board**
13 **would not be able to make a finding of an**
14 **inability to pay on a budget?**
15 A. That's correct.
16 **Q. Based on an audited financial statement**
17 **from the year 2010, and now we're in the year**
18 **2012, would it surprise you to learn that a**
19 **\$5 million surplus has now been either spent or**
20 **allocated in such a way that it cannot be used to**
21 **pay a \$1.4 administrative civil ability penalty?**
22 A. Yes, it would. And that conclusion is
23 based on the fact that the current income, current
24 expenses as reported in the last fiscal year's
25 document is very adequate to meet. There should

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1 be no negative balances. If a catastrophe, if
2 something happened that was unforeseen, you could
3 see a substantial decline in that balance, but I'm
4 not aware that that in fact has happened.
5 **Q. Okay. I wanted to direct your**
6 **attention --**
7 MR. YOUNG: Hang on. Is there an
8 objection?
9 MS. JAHR: No, I just wanted to
10 clarify. You said last year's financial record.
11 Are you referring to the 2010 financial year?
12 When you had just stated you said the conclusion
13 was based on the income and expenses from the last
14 year's fiscal statement.
15 MR. HORNER: Yes, 2010.
16 MS. JAHR: Okay.
17 MR. HORNER: That's fiscal year 2010.
18 BY MS. MACEDO:
19 **Q. Then we had a brief discussion about**
20 **the current wastewater rates for the citizens of**
21 **Oceano, and this was actually submitted with the**
22 **prosecution team's rebuttal documents and**
23 **Exhibit 113, and I would like to point out that**
24 **these documents and rates are not four years old.**
25 **You've assisted me with printing this document,**

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1 **this is Page 6 of 18 for Exhibit 113. And can you**
2 **describe what this reflects?**
3 A. This is the rate structure that's
4 currently being used by the district, and this was
5 proposed to the board by ordinance No. 2006-01.
6 And it includes the rates that were submitted for
7 approval up to May 1, 2010.
8 **Q. So the rates are more current than four**
9 **years old, they're as current as May 1, 2010?**
10 A. These -- yes. These were adopted by
11 the board and are currently operational.
12 **Q. For my final question or series of**
13 **questions, you've testified in several ACL cases**
14 **around the state, correct?**
15 A. That's correct.
16 **Q. Are you familiar with how the inability**
17 **to pay defense works for dischargers?**
18 A. Yes.
19 **Q. So once the prosecution team conducts**
20 **the review of documents how does the burden of**
21 **proof then shift?**
22 A. It is on the discharger of the defense
23 to show that they have inability to pay.
24 **Q. And is it your opinion in this case**
25 **that they have -- the district has demonstrated an**

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1 **inability to pay?**
2 A. Yes, as of end of fiscal year 2009,
3 2010.
4 **Q. Does the district has the ability to**
5 **pay the recommended penalty?**
6 A. Yes, that's right.
7 MS. MACEDO: No further questions.
8 MS. THORME: Mr. Young, if I could, we
9 just got copies of these documents and I didn't
10 have them with me because they weren't in
11 evidence. If I could have a little leeway to ask
12 a couple questions.
13 MR. YOUNG: Sure. You're referring to
14 this?
15 BY MS. THORME:
16 **Q. Exhibit 114. So if you could put up --**
17 **we don't have this electronically either, so I**
18 **would ask if we could put up the page that you**
19 **were testifying from, which I believe is Page 3 of**
20 **that document. You had it pop up when he was**
21 **originally testifying.**
22 **So Dr. Horner, was this the document**
23 **that you talked to me about earlier that you were**
24 **using to demonstrate a \$5 million surplus?**
25 A. Yes, I was.

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25 (Pages 94 to 97)

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<p>1 Q. Okay. So did the amount of money in 2 this financial report go down from 2009 to 2010? 3 A. Yes, it did. 4 Q. Okay. And so the money that you're 5 looking at at the very bottom where it says 6 unrestricted 5.180985, is that the number that 7 you're using for the \$5 million? 8 No, the number that is used is the 9 amount of the current assets, which in 2010, I'm 10 just going to say fiscal year '09-'10 is 11 \$5,640,248. You have to subtract from that the 12 current liabilities, which is in this case, again, 13 for the year 2010, \$515,160. And that gives you 14 what is called the net current assets, which in 15 this case is \$5,125,079. 16 Q. Where do you see that number? 17 A. It's not on here. 18 Q. Okay. Where did it come from? 19 A. Okay. It came from the total current 20 assets. If I could go over there I could -- 21 Q. Yeah, you can go and point to it. 22 A. Maybe the screen can be enlarged. Here 23 we go. Okay. The total current assets -- I can't 24 quite read that, \$5,640,248. Net current assets 25 is this number right here minus the total current</p> <p style="text-align: right;">Page 98</p>	<p>1 that's on the screen. 2 MS. JAHR: Bates stamped SLO-60537. 3 BY MS. THORME: 4 Q. So does that \$5 million number that 5 you're looking at include these reserve 6 accounts? 7 A. No. 8 Q. Why not? 9 A. Because it doesn't. 10 Q. Well, where is that money accounted for 11 on the earlier slide? 12 A. Okay. One of the problems that you 13 have with nonstandardized financial reports is 14 that there is a whole degree of latitude that the 15 auditors have in preparing these reports. A 16 comprehensive annual financial report dictates how 17 all of these numbers will be prepared and 18 reported. The typical -- no, the mandated -- the 19 procedure in a comprehensive annual report 20 specifies that the current net assets are 21 unencumbered, unencumbered either with respect to 22 restriction or with respect to law or ruling. And 23 that page right there is not what I'm concerned 24 about. 25 Q. Okay. And you had talked with</p> <p style="text-align: right;">Page 100</p>
<p>1 liabilities, which is \$515,169. That is what's 2 called your total net current assets. 3 Q. Is that not the same as essentially 4 down at the bottom where it says net assets and 5 some of it's invested and some of it is 6 quote/unquote unrestricted? 7 A. No. 8 Q. So how is it different? 9 A. Well, what number are you referring to? 10 Q. Down at the bottom there's a 11 \$13 million figure for invested in capital assets 12 and then unrestricted \$5.1 million which is 13 essentially in the same range of the number that 14 you're speaking to me about. 15 A. Your net assets includes a lot of 16 invested capital and net related debt. It's 17 called other things, but that's not what we're 18 looking at in terms of ability to pay. 19 Q. Okay. So you're using the \$5 million 20 figure of cash and cash equivalence? 21 A. Yes. 22 Q. So if we can put up the last page of 23 this exhibit. It says note 9 reserves and 24 retained earnings. 25 MR. YOUNG: Next page after the one</p> <p style="text-align: right;">Page 99</p>	<p>1 Ms. Macedo about the rates, and those were 2 projected rates from an earlier time, projected to 3 what they would be in a later time; is that 4 correct? 5 A. No. 6 Q. The document that she had up on the 7 screen it said future rates as of, and then each 8 different year. 9 A. Okay. An ordinance No. 2006-01 was put 10 before the board of directors, these were proposed 11 rates that were approved. 12 Q. Right. 13 A. And now are currently in use. 14 Q. Okay. And what do those rates cover? 15 A. Those cover the rates to the 16 connections for the district. 17 Q. Okay. So that covers the treatment 18 plant and the trunk lines that are owned by the 19 district; is that right? 20 A. It covers whatever the district covers 21 to recover -- to charge service to recover to the 22 expenses. 23 Q. Do the satellite collection agencies 24 also charge rates for transport of sewage? 25 A. They do.</p> <p style="text-align: right;">Page 101</p>

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1 **Q. And those are additive to the**
2 **district's rate; is that correct?**
3 A. Only for those areas that pertain to
4 the other -- their rate structure of their own.
5 My understanding is that the South San Luis Obispo
6 County Sanitation District furnishes services to
7 two other districts. Is that correct?
8 **Q. No, it's three.**
9 A. Well, aren't they included -- they're
10 one.
11 **Q. No.**
12 MS. MACEDO: She's not testifying.
13 BY MS. THORME:
14 **Q. I can't testify, but it will come out**
15 **later in the day.**
16 A. Okay. The \$16 is the recovery that it
17 costs.
18 **Q. Okay. But then there are satellite**
19 **correction system agencies as well?**
20 A. Yes.
21 **Q. And do you know what those rates are?**
22 A. I do. I've got them.
23 **Q. Okay.**
24 A. If you want to discuss those.
25 **Q. For all three of the collection system**
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1 **agencies?**
2 A. I do.
3 **Q. Which collection system agencies do you**
4 **have rates for?**
5 A. Oceano CSD, City of Grover Beach.
6 That's it. I have two.
7 **Q. Do you have what those monthly rates**
8 **are?**
9 A. Yes, I do.
10 **Q. Okay. And do you know whether the**
11 **prosecution team put those into evidence?**
12 A. No.
13 **Q. Okay. Exhibit 113.**
14 MS. MACEDO: Want me to pull it up?
15 BY MS. THORME:
16 **Q. No, we can do it. We have that one.**
17 **If you can blow that first table up a little bit**
18 **for me, please.**
19 **So you said these were the current**
20 **rates, but the last rate is -- these were adopted**
21 **in 2006, is that what you testified?**
22 A. Yes.
23 **Q. So this says future rate as of May 1st,**
24 **2010. Is that the latest rate?**
25 A. Yes.
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1 **Q. And do you know what the current rates**
2 **are?**
3 A. Well, it says right there.
4 **Q. Do you know whether they've been**
5 **changed since May 1st, 2010?**
6 A. No.
7 MS. THORME: No further questions.
8 MR. YOUNG: Any redirect?
9 MS. MACEDO: No.
10 MR. YOUNG: Okay. Then we'll have
11 board questions. Let's start at the far end.
12 Mr. Johnston, do you have any questions? We'll
13 just go down the line, Mr. Jordon, Dr. Wolff,
14 Mr. Harris.
15 MR. JOHNSTON: Dr. Horner, I'm still
16 trying to sort out this, and I admit reading
17 financial statements is far from my specialty.
18 I'm looking at the final page of this auditor's
19 report, I believe it was shown earlier, the 2010
20 auditor's report, and it's note 9 reserves and
21 retained earnings. So is it your understanding --
22 I see a reserve for capital replacement and
23 expansion. Is it your understanding that this is
24 the fund created that's set aside, I guess created
25 by connection fees and can't be touched?
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1 MR. HORNER: That's the way this reads,
2 yes.
3 MR. JOHNSTON: Okay. And does that --
4 so I'm looking at the -- there's a bottom number
5 there \$5,180,985 of total unrestricted net assets,
6 and it's not clear to me why they would -- maybe
7 this is term of art, but why they would call it
8 unrestricted if it in fact is restricted to only
9 using for the specified purpose. Is that term
10 unrestricted mean that they can use it for any
11 purpose or is that -- do you have any sense?
12 MR. HORNER: Procedures that are
13 established in the comprehensives annual financial
14 report does not allow for any kind of what I'm
15 going to call, probably incorrectly, double
16 accounting. Okay.
17 The assets that are listed in your
18 balance sheet which are current assets must be
19 unrestricted. Those must exist as cash or cash
20 equivalence or the accounts receivable, interest
21 receivable pre-paid expenses. And they cannot
22 appear in a proprietary restricted fund.
23 MR. JOHNSTON: So what you're
24 testifying is that if this accounting form were in
25 the preferred format that this would be quite
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<p>1 clear?</p> <p>2 MR. HORNER: Yes.</p> <p>3 MR. JOHNSTON: Okay. But I'm trying</p> <p>4 to -- it's not.</p> <p>5 MR. HORNER: It's not.</p> <p>6 MR. JOHNSTON: So I'm trying to get at</p> <p>7 whether you're able to testify one way or another</p> <p>8 as to whether there is a portion of the -- what</p> <p>9 you're looking at, I believe the term you used was</p> <p>10 net unrestricted assets.</p> <p>11 MR. HORNER: Net current assets.</p> <p>12 MR. JOHNSTON: Net current assets.</p> <p>13 MR. HORNER: Right.</p> <p>14 MR. JOHNSTON: That is in fact a</p> <p>15 reserve that they cannot legally touch for capital</p> <p>16 replacement and expansion. And are you able to</p> <p>17 discern that from these documents?</p> <p>18 MR. HORNER: This document -- the</p> <p>19 definition standard accounting definition for net</p> <p>20 current assets is that it is unrestricted. It is</p> <p>21 primarily set aside or set for use for immediate</p> <p>22 contingencies and it is not earmarked for any</p> <p>23 particular use. That is the standard accounting</p> <p>24 definition.</p> <p>25 MR. JOHNSTON: Okay. So what -- and I</p> <p style="text-align: right;">Page 106</p>	<p>1 for that project? Isn't this where it would show</p> <p>2 up?</p> <p>3 MR. HORNER: What you're asking me for</p> <p>4 is, if I understand your question, is, is the</p> <p>5 question on managing financial accounts, how would</p> <p>6 you manage what you have and how you would</p> <p>7 indicate on paper what you're doing. Okay. And</p> <p>8 I'm reluctant to go there because that's certainly</p> <p>9 not my job.</p> <p>10 MR. JORDON: But on the flip side</p> <p>11 you're asking me to presume an alternative</p> <p>12 scenario that you presented, right?</p> <p>13 MR. HORNER: Absolutely.</p> <p>14 MR. JORDON: Thank you.</p> <p>15 MR. HORNER: Hypothetically, if an</p> <p>16 entity is planning what you said, a capital</p> <p>17 expansion, a project, what you should do is</p> <p>18 prepare the necessary funds to do that, to</p> <p>19 encumber your savings to be able to earmark that,</p> <p>20 to be able to use it when it is required. And</p> <p>21 that's -- I get back to this CAFR, comprehensive</p> <p>22 annual financial report, mandates that. That is</p> <p>23 set on the formula. By saying that you had a</p> <p>24 current asset you cannot have it encumbered. So</p> <p>25 their thinking about that is not evident to the</p> <p style="text-align: right;">Page 108</p>
<p>1 don't want to put words in your mouth, but my</p> <p>2 understanding then from what you're saying is that</p> <p>3 if standard accounting definitions apply that the</p> <p>4 restricted -- the connection fees restricted fund</p> <p>5 is not included in the net current assets?</p> <p>6 MR. HORNER: That's correct.</p> <p>7 MR. JOHNSTON: I think I understand.</p> <p>8 MR. YOUNG: Okay. Mr. Jordon.</p> <p>9 MR. JORDON: Thank you, Mr. Chair.</p> <p>10 Good morning, Dr. Horner. I'm actually</p> <p>11 sympathizing with both side's points. My</p> <p>12 experience is that the city government at least is</p> <p>13 that the use of the words encumbrances and</p> <p>14 restrictions is a term that's played with in</p> <p>15 different ways by cities and also even within</p> <p>16 departments within the city.</p> <p>17 Could these numbers on this page</p> <p>18 also -- while I understand the point you're</p> <p>19 making, could they also just not be -- also be a</p> <p>20 pot that is being accumulated for long-term</p> <p>21 financial source on capital projects? Could they</p> <p>22 not have a 20-year list of capital projects and</p> <p>23 this is the method they're accumulating funds</p> <p>24 until they are ready to do that project or until</p> <p>25 they're ready to encumber or restrict those funds</p> <p style="text-align: right;">Page 107</p>	<p>1 person that's reading the financial statements.</p> <p>2 MR. JORDON: So my experience is I</p> <p>3 think a little difference than that, and maybe</p> <p>4 we're just far apart on this word encumbered.</p> <p>5 Because if I have a 20 year schedule of unfunded</p> <p>6 capital improvements those out years are subject</p> <p>7 to city council or board of supervisor turnover as</p> <p>8 to what will be funded in the future or not, and I</p> <p>9 don't think they're necessarily -- at one point in</p> <p>10 time that they're restricted or encumbered. Those</p> <p>11 monies can move back out again. But they're</p> <p>12 certainly shown as -- my experience, they're shown</p> <p>13 somewhere on a balance sheet or a fund or a bucket</p> <p>14 as available funds being set aside for a future</p> <p>15 capital project. That's my experience, so I --</p> <p>16 MR. HORNER: I understand.</p> <p>17 MR. YOUNG: Is there a question?</p> <p>18 MR. JORDON: That might not be proper</p> <p>19 in the way that you're describing it or the way</p> <p>20 you would apply to this particular situation. So</p> <p>21 going back to my question then, is it possible</p> <p>22 that the top line there of \$2.9 million is being</p> <p>23 represented in that method?</p> <p>24 MR. HORNER: Well, I don't --</p> <p>25 MR. JORDON: You don't know if it's</p> <p style="text-align: right;">Page 109</p>

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<p>1 possible?</p> <p>2 MR. HORNER: Well, it's possible, but I</p> <p>3 think that's only in the management of the</p> <p>4 district.</p> <p>5 MR. JORDON: Okay. Thanks.</p> <p>6 MR. YOUNG: Dr. Wolff.</p> <p>7 MR. WOLFF: Thank you. In your</p> <p>8 testimony you addressed two issues, one is the</p> <p>9 ability to pay the fine, and then the second one,</p> <p>10 which the first part we covered, was the</p> <p>11 competitive benefit of not having performed the</p> <p>12 electrical repairs which were budgeted to</p> <p>13 initially \$200,000. And in the capital</p> <p>14 improvement activities the electrical system</p> <p>15 upgrades were listed as 04-MB-116, and as I</p> <p>16 understand those originally were estimated about</p> <p>17 \$200,000 to perform various electrical system</p> <p>18 upgrades. And earlier 01-MB-101 energy service</p> <p>19 project is a cogeneration installation, which if I</p> <p>20 recall was budgeted around \$700,000.</p> <p>21 The justification also in the evidence</p> <p>22 that were provided for the cogeneration was about</p> <p>23 \$120,000 year energy saving by installing the</p> <p>24 system. That was one of primary economic element</p> <p>25 of the analysis.</p> <p style="text-align: right;">Page 110</p>	<p>1 MR. JEFFRIES: Dr. Horner, I think</p> <p>2 there's some confusion that I'm hearing from some</p> <p>3 of my colleagues of comparing the budget to a</p> <p>4 financial statement or an audited financial</p> <p>5 statement. In governmental accounting it's very</p> <p>6 difficult to track some of these items.</p> <p>7 You talked -- and there's been a lot of</p> <p>8 discussion about restricted funds. There are</p> <p>9 restricted funds that are restricted by the vote</p> <p>10 of the board and there's restricted funds by</p> <p>11 government code.</p> <p>12 Now, I know you said you didn't look at</p> <p>13 restricted funds by government code, but did you</p> <p>14 look at the budgets and their financial statements</p> <p>15 to look at restricted funds that were placed by a</p> <p>16 vote of a board? And those funds normally are for</p> <p>17 capital projects which could be changed by a vote</p> <p>18 of the board by simple vote. Did you look at</p> <p>19 those as restricted funds or nonrestricted funds?</p> <p>20 MR. HORNER: I assumed those were</p> <p>21 restricted funds.</p> <p>22 MR. JEFFRIES: You assumed those were</p> <p>23 restricted funds?</p> <p>24 MR. HORNER: That is correct.</p> <p>25 MR. JEFFRIES: So that would mean there</p> <p style="text-align: right;">Page 112</p>
<p>1 So when reviewing competitive benefits</p> <p>2 in allocating certain funds for certain activities</p> <p>3 versus other activities, when you reviewed the</p> <p>4 fiscal year of 2010 have you made any observation</p> <p>5 in terms of the ability of the district to commit</p> <p>6 some, you know, significant large capital</p> <p>7 equipment one way versus another, meaning \$200,000</p> <p>8 versus \$700,000? And I'm not asking you, you</p> <p>9 know, the technical question associated with</p> <p>10 whether or not one would be more beneficial than</p> <p>11 the other, but the affordability of being able to</p> <p>12 spend \$700,000 versus \$200,000.</p> <p>13 MR. HORNER: No, I didn't. I did not</p> <p>14 make that determination. My job is to determine</p> <p>15 if there is a compliance project that was not</p> <p>16 conducted or undertaken or practices that were not</p> <p>17 followed or procedures that needed to be upgraded</p> <p>18 and to determine what the economic gain from that</p> <p>19 by not doing -- either by avoiding it completely</p> <p>20 or delaying. And that's all my -- that's all I</p> <p>21 did.</p> <p>22 MR. WOLFF: Thank you.</p> <p>23 MR. YOUNG: Mr. Harris.</p> <p>24 MR. HARRIS: No questions.</p> <p>25 MR. YOUNG: Mr. Jeffries.</p> <p style="text-align: right;">Page 111</p>	<p>1 would be more cash available if the board decided,</p> <p>2 if they had an emergency, that they could by a</p> <p>3 vote and change that restriction to whatever they</p> <p>4 wanted to do with it at that particular time.</p> <p>5 Now, did you do any comparisons from their budgets</p> <p>6 to their audited financial statement year endings</p> <p>7 for each year, did you do comparisons?</p> <p>8 MR. HORNER: No, I did not.</p> <p>9 MR. JEFFRIES: You didn't. So you just</p> <p>10 took the audited financial statements?</p> <p>11 MR. HORNER: That's right.</p> <p>12 MR. JEFFRIES: And a lot of audited</p> <p>13 financial statements do not bring up all those</p> <p>14 particular restricted funds that are normally in</p> <p>15 budgets.</p> <p>16 MR. HORNER: Yes, they do. The</p> <p>17 restricted funds are listed as a financial</p> <p>18 statement.</p> <p>19 MR. JEFFRIES: Well, all restricted?</p> <p>20 MR. HORNER: Yes.</p> <p>21 MR. JEFFRIES: Okay. You took into</p> <p>22 account for all the restricted?</p> <p>23 MR. HORNER: Yes, but not as a budgeted</p> <p>24 item. I didn't look at the budgets. I only</p> <p>25 looked at the reported funds that were in the</p> <p style="text-align: right;">Page 113</p>

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<p>1 proprietary.</p> <p>2 MR. JEFFRIES: Okay. And did you</p> <p>3 separate those restricted funds? You did not is</p> <p>4 my understanding.</p> <p>5 MR. HORNER: Yes.</p> <p>6 MR. JEFFRIES: You did?</p> <p>7 MR. HORNER: Yes.</p> <p>8 MR. JEFFRIES: Oh, you did?</p> <p>9 MR. HORNER: Yes. They are not</p> <p>10 included in the financial current assets.</p> <p>11 MR. JEFFRIES: Just to explain my</p> <p>12 question a little bit further, and maybe I'm</p> <p>13 repeating myself. As I stated, there are</p> <p>14 government required restricted funds.</p> <p>15 MR. HORNER: Yes.</p> <p>16 MR. JEFFRIES: There are restricted</p> <p>17 funds that are placed on funds by the local</p> <p>18 board.</p> <p>19 MR. HORNER: Yes.</p> <p>20 MR. JEFFRIES: Okay. Did you separate</p> <p>21 those out again?</p> <p>22 MR. HORNER: Yes.</p> <p>23 MR. JEFFRIES: You did?</p> <p>24 MR. HORNER: Yes.</p> <p>25 MR. JEFFRIES: Okay. And that was</p> <p style="text-align: right;">Page 114</p>	<p>1 MR. JEFFRIES: Calling me an expert</p> <p>2 witness or something?</p> <p>3 MR. YOUNG: Well, you can ask the</p> <p>4 witness the information that you're looking for</p> <p>5 instead of loading it up with a lot of</p> <p>6 information; so --</p> <p>7 MR. JEFFRIES: Well, I have a lot of</p> <p>8 experience.</p> <p>9 MR. YOUNG: We all do.</p> <p>10 MR. JEFFRIES: I understand.</p> <p>11 MR. YOUNG: I think it's best if you</p> <p>12 ask the questions, if you can, and not load it up</p> <p>13 with so much stuff, you know what I mean?</p> <p>14 MR. HORNER: I think there's something</p> <p>15 that has not been discussed here that is pertinent</p> <p>16 to your question. I use the US CPA model that</p> <p>17 determines the ability to pay of the</p> <p>18 municipalities. Okay. In the priority for</p> <p>19 ability to pay we use current assets as the</p> <p>20 priority for payment. The second priority</p> <p>21 involves their ability to finance. Third, they go</p> <p>22 into raising fees for dealing with their operating</p> <p>23 income. So that is the last priority, that</p> <p>24 ability to pay. We didn't even get to the</p> <p>25 financing part of it because the assets were</p> <p style="text-align: right;">Page 116</p>
<p>1 included in their ability to pay?</p> <p>2 MR. HORNER: Yes.</p> <p>3 MR. JEFFRIES: All right. Now, there</p> <p>4 was an indication, I don't know, by somebody that</p> <p>5 said to raise rates you have to have a vote by the</p> <p>6 people, but you can also raise fees. Now, some</p> <p>7 people say well, fees are taxes, yeah, sure they</p> <p>8 are. Any time you have an increase from</p> <p>9 government it's a tax, I don't care what you call</p> <p>10 it, but you don't have -- to raise fees you don't</p> <p>11 have to have a vote of the people to raise fees.</p> <p>12 MR. HORNER: You have to have -- my</p> <p>13 understanding is with the district is that you</p> <p>14 have to have a majority of the board of</p> <p>15 directors.</p> <p>16 MR. JEFFRIES: That's right. They can</p> <p>17 raise the fees which is normal operating</p> <p>18 procedure.</p> <p>19 MR. HORNER: Yes.</p> <p>20 MR. JEFFRIES: Now, I understand --</p> <p>21 MR. YOUNG: I think it's best that you</p> <p>22 pose your questions to him instead of kind of</p> <p>23 testifying as to what we may or may not know.</p> <p>24 Counsel hasn't objected and, you know, we're</p> <p>25 tending to do that and I think it's --</p> <p style="text-align: right;">Page 115</p>	<p>1 sufficient to cover the proposed ACL.</p> <p>2 MR. JEFFRIES: Let me ask you this</p> <p>3 then: Your analysis of the three years that you</p> <p>4 presented to us, in your opinion with the trend do</p> <p>5 they have the ability to pay the fine?</p> <p>6 A. Yes, they do.</p> <p>7 MR. JEFFRIES: Okay. Thank you very</p> <p>8 much.</p> <p>9 MR. YOUNG: Okay. Last question for</p> <p>10 you, Dr. Horner. Can you tell us what exhibit</p> <p>11 number you were referring to early on when you</p> <p>12 were talking about the 2004, 2005 budget? I think</p> <p>13 it had some discussion about the proposal for</p> <p>14 electrical system upgrade.</p> <p>15 MS. MACEDO: Number two.</p> <p>16 MR. YOUNG: That's Exhibit No. 2.</p> <p>17 Okay. All right. Any other board questions?</p> <p>18 Okay. Thank you, Dr. Horner.</p> <p>19 MS. MACEDO: Just a point of</p> <p>20 clarification. We take Dr. Horner out of order</p> <p>21 just like the district took Mr. Thoma out of</p> <p>22 order. So he was planning to depart and so we</p> <p>23 just wanted to make sure that was a acceptable.</p> <p>24 MR. YOUNG: Is that okay? All right.</p> <p>25 That's fine. You can have your witness list any</p> <p style="text-align: right;">Page 117</p>

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<p>1 way you want. I don't know what order you were 2 proposing. So far as I know he was your first 3 witness.</p> <p>4</p> <p>5 DIRECT EXAMINATION 6 (Jim Fischer)</p> <p>7 BY MS. MACEDO:</p> <p>8 Q. We're going to call our next witness, 9 Jim Fischer.</p> <p>10 A. Good morning, members of the board. My 11 name is Jim Fischer and I'm a water resource 12 control engineer, State Water Board Office of 13 Enforcement. I'll be presenting the following 14 information to you today, some of which you've 15 already heard, hopefully to clarify some of the 16 things we've talked about here as well.</p> <p>17 First, an overview of the district's 18 sewer system service area, including other service 19 systems feeding into the district's sanitary sewer 20 system wastewater treatment plant.</p> <p>21 Second, information about the 22 district's wastewater treatment plant facility, 23 including its location and basic information about 24 how it operates.</p> <p>25 Third, the following areas we talked</p> <p style="text-align: right;">Page 118</p>	<p>1 the district's trunk line or the wastewater 2 treatment plant directly. Those systems are 3 regulated separately and under our statewide 4 sanitary sewer order.</p> <p>5 This is an aerial view submitted to us 6 from the district showing the wastewater treatment 7 plant in relation to the Oceano Airport here to 8 the left and the Oceano Dunes to the right.</p> <p>9 Next slide, please. We have the area 10 in red here to show you where the plant is in the 11 aerial view. And there's also nearby homes to the 12 left here showing Oceano along with the Oceano 13 community service district sewer in blue and 14 district's trunk line here in black.</p> <p>15 I'd like to provide you with a 16 snapshot, basically at the treatment plant here, 17 how it works in summary. All the wastewater 18 received in the area comes into this area here 19 circled in red, the red arrows here we put on the 20 slide. The process for secondary treatment 21 through all these processes in the plant, 22 disinfectant prior to being discharged into the 23 Pacific Ocean and underwater outfall.</p> <p>24 On the day of the spill the red circled 25 area shows the location of the district's</p> <p style="text-align: right;">Page 120</p>
<p>1 about before that cause or contributed to sewer 2 overflow.</p> <p>3 And lastly, one more thing, the 4 sequence of events on December 19th and 20th, 5 ending with information about our investigation, 6 including discussion about the violations.</p> <p>7 This is a slide showing a map of the 8 district's service area boundary right here in 9 red. See the big boundary in red, that's our 10 service area, basically a footprint of where all 11 the wastewater's collected, transported and 12 finally treated down here in Oceano at the plant.</p> <p>13 The district's wastewater treatment 14 plant is regulated under a national pollutant 15 discharge elimination system or a PDES permit, and 16 also regulated under statewide sanitary sewer 17 order or a statewide WDR for its sewer system, the 18 trunk lines. You've heard of trunk lines before, 19 the big giant sewers, they're shown here in black. 20 These are all operated and maintained by the 21 district.</p> <p>22 Also note that other sewer systems 23 Arroyo Grande, Grover Beach and Oceano, they're 24 shown -- the cities are shown here but not 25 necessarily the sewer systems. Those feed into</p> <p style="text-align: right;">Page 119</p>	<p>1 headworks where the electrical failure occurred, 2 that was one cause of the sewage overflow on 3 December 19th and 20th.</p> <p>4 Ms. Macedo earlier discussed some of 5 the maintenance issues that led or contributed to 6 the overflow that occurred on December 19th and 7 20th. I'd have to show you some of the 8 photographs and orient you to where those items 9 are located in the wastewater treatment plant.</p> <p>10 This line shows the district's 11 Exhibit 58, it's a diagram of the headworks room 12 at the plant. Let me explain a little bit. It 13 shows some of the -- several malfunctioning 14 components we talked about earlier. The outer 15 wall here at the top, this would be the overhead 16 view, the bottom here the elevation view, and the 17 top view you can see this wall around the 18 headworks, that's referred to as the flood wall.</p> <p>19 I'd also like to show you additional 20 photographs that are components inside these 21 headworks. And as you can see the four influent 22 pumps here in the overhead view are located here, 23 and there's also a discharge valve, I'll show a 24 little bit more -- pardon me, I'm sorry, a gate 25 valve here, both in the overhead view and in the</p> <p style="text-align: right;">Page 121</p>

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<p>1 elevation view here.</p> <p>2 This is just a re-circled, not a</p> <p>3 contributing factor here, for the similar flows</p> <p>4 leaking influent slide gate, it's circled here in</p> <p>5 red and the slide is highlighted for you. The</p> <p>6 influent slide gate allows the district to stop</p> <p>7 the flow of incoming sewage into the plant.</p> <p>8 According to deposition by</p> <p>9 Mr. Appleton, the slide gate accessibly may not</p> <p>10 have been repaired since the plant was constructed</p> <p>11 in the early '60s.</p> <p>12 This is the district's pump room</p> <p>13 showing the influent pumps here that failed on the</p> <p>14 day of the spill, where they're located. The</p> <p>15 cause of the failure was in part electrical.</p> <p>16 Mr. Appleton will talk more about the electrical</p> <p>17 issues later.</p> <p>18 This is a diagram showing the shunt</p> <p>19 trip switch here right in the middle. That was</p> <p>20 provided in Mr. Thoma's declaration just before</p> <p>21 orientation. We circled the shunt trip switch</p> <p>22 this next line here in red. Regardless of our</p> <p>23 agreement or disagreement with Mr. Thoma's</p> <p>24 testimony, it's clear there are water intrusion</p> <p>25 issues within the electrical conduits of the</p> <p style="text-align: right;">Page 122</p>	<p>1 intrusion into the electrical system shown here of</p> <p>2 ponding, even during periods of low rain or</p> <p>3 alternatively during the winter when the ground</p> <p>4 water table is high.</p> <p>5 This is a photo submitted to us by Jeff</p> <p>6 Appleton to the district in July 2006 showing the</p> <p>7 ponding water around the headworks. This ponding</p> <p>8 issue had never been resolved prior to the sewage</p> <p>9 overflow on December 2010.</p> <p>10 While the previous photo showed the</p> <p>11 location of the electrical vault, I'll go back to</p> <p>12 that, I forgot to point that out. Right here, the</p> <p>13 overflow we've been talking about.</p> <p>14 The next photo here is just another</p> <p>15 angle of the ponding issues in relation to where</p> <p>16 the flood wall was around the headworks.</p> <p>17 MR. YOUNG: Mr. Fischer, I just want to</p> <p>18 ask you a point of clarification. Stop the clock.</p> <p>19 We heard testimony from Mr. Thoma that this area</p> <p>20 had been raised or somehow further protected I</p> <p>21 thought from water intrusion sometime before</p> <p>22 2010.</p> <p>23 MS. MACEDO: The area itself hadn't</p> <p>24 been raised, a concrete berm had been placed</p> <p>25 around it.</p> <p style="text-align: right;">Page 124</p>
<p>1 plant.</p> <p>2 Another contributing factor to the</p> <p>3 sewer's overflow on December 19th was the</p> <p>4 emergency diesel pump shown here on the slide.</p> <p>5 The emergency diesel pump had intermittent</p> <p>6 problems on December 19th, including stopping and</p> <p>7 starting numerous times. The district used this</p> <p>8 pump, there was sewage around pumps when it failed</p> <p>9 on December 19th.</p> <p>10 Another contributing factor to the</p> <p>11 sewer overflow was the emergency diesel pump's</p> <p>12 discharge valve. Showing the slide submitted to</p> <p>13 us by the district -- go back here. It's right</p> <p>14 here, and on the next slide we circled it in red</p> <p>15 to show it to you more closely. Due to the rising</p> <p>16 water because of the leaking influent gate this</p> <p>17 valve quickly became submerged not allowing the</p> <p>18 valve to be fully open. Unfortunately, this valve</p> <p>19 had been left in a closed position due to the</p> <p>20 standard operating procedures developed by the</p> <p>21 district.</p> <p>22 Another contributing factor to the</p> <p>23 sewer overflow was the water intrusion issues</p> <p>24 which you described as ponding issues near the</p> <p>25 headworks. The ponding issues allow water</p> <p style="text-align: right;">Page 123</p>	<p>1 MS. THORME: Ms. Macedo cannot testify</p> <p>2 today. She wasn't sworn and she's not allowed</p> <p>3 to -- Ms. Macedo cannot give testimony today. She</p> <p>4 was not a sworn witness.</p> <p>5 MR. YOUNG: Correct. Do you know if</p> <p>6 anything -- if what we're looking at in that photo</p> <p>7 was the condition of the top of the vault area at</p> <p>8 the time of the spill in 2010? You said this is a</p> <p>9 2006 photo from Appleton?</p> <p>10 MR. FISCHER: That's correct.</p> <p>11 MR. YOUNG: Okay. Is this the way the</p> <p>12 area above the vault looked in 2010 when the spill</p> <p>13 happened?</p> <p>14 MR. FISCHER: I don't know the answer</p> <p>15 to that question.</p> <p>16 MR. YOUNG: Thank you. Go ahead.</p> <p>17 MR. FISCHER: So one of the problems of</p> <p>18 the ponding, I'd like to explain, can lead to</p> <p>19 electrical shorts and in fact it did. So that's</p> <p>20 why I'm showing you this slide here of the</p> <p>21 ponding.</p> <p>22 This is the district's main budget item</p> <p>23 No. 16, we heard this before. This is the actual</p> <p>24 language highlighted here, we highlighted this.</p> <p>25 Anticipated electrical system upgrade for the</p> <p style="text-align: right;">Page 125</p>

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<p>1 fiscal years 2010 and 2011 which says, "As a 2 result, there have been several instances where 3 the wiring has failed and has caused an electrical 4 fire or loss of power." 5 Now I'd like to transition and tell you 6 about the sequence of events during December 19th 7 and 20th. The overflow we talked about today 8 commenced on a Sunday morning. The day before the 9 overflow a predicted storm had brought nearly 10 three inches of rain to the area; however, the 11 plant was unattended by personnel on the morning 12 of the 19th until an alarm notified an operator 13 that an in-person response was needed. The former 14 chief plant operator arrived shortly thereafter, 15 approximately 10:30 a.m., all four influent pumps 16 failed because of electrical problems. The CPO 17 and other plant personnel tried to use the 18 emergency diesel pump to divert the flow from the 19 headworks into the plant; however, the emergency 20 diesel pump had intermittent operational problems 21 throughout the day. In addition, the discharge 22 valve of the emergency diesel pump was in a closed 23 position and could only be partially opened due to 24 the rising water of the headworks room. 25 Shortly after the electrical failure</p> <p style="text-align: right;">Page 126</p>	<p>1 This slide summarizes the investigative 2 work the prosecution team did to develop the case. 3 In addition, the regional board provided 4 additional personnel from the investigative board, 5 especially Matt Keeling early in the process, 6 Katie DiSimone is here, and Harvey Packard more 7 recently in the room also. The ultimate decisions 8 as to whether to settle or file a penalty amount 9 are always going to be made by the region. 10 So March 2010 after being called to 11 assist, the office of enforcement conducted a 12 facility inspection of the plant, followed by 13 issuance of a notice of violation and 13267 order. 14 And extensive review of the district's response to 15 that NOV, followed by numerous technical meetings 16 with the district both in person and on the phone. 17 And additional investigation was conducted by the 18 office of enforcement in the sewer backups in the 19 private residences. 20 Settlement negotiations failed to 21 resolve the matter primarily because the 22 disagreement concerning the volume. And the 23 district's score kept changing, for example, in 24 terms of the number of homes affected, how the 25 district's net adjustment of law was applied,</p> <p style="text-align: right;">Page 128</p>
<p>1 sewage began to back up and overflow from manholes 2 and other locations in the district's and Oceano's 3 collection system and also backed up sewage inside 4 of homes in Oceano. The overflow lasted most of 5 the day on 19th and small spills persisted on 6 20th. The pump discharge valve was fully opened 7 by the district personnel around 2:30, an 8 additional pump was borrowed from Pismo Beach and 9 was operational around 6:00 p.m. 10 Moving to the next slide. Around 11 8:20 p.m. pump No. 3 was restarted and in 12 combination with the emergency diesel pump, around 13 ten o'clock p.m. the overflow had stopped. In 14 addition, on December 20th in the morning 15 additional sewer overflow was experienced in 16 several locations. 17 The regional board was notified of the 18 spill by the chief plant operator. Because of the 19 size of the spill and resource issues, the 20 regional board sought assistance from the State 21 Water Board Office of Enforcement in this case, 22 along with a number of other matter. The State 23 Water Board commonly does this type of practice 24 throughout the state to assist all regions in the 25 state.</p> <p style="text-align: right;">Page 127</p>	<p>1 determining, et cetera. 2 Settlement negotiations broke off May 3 2012, the complaint was issued on June 19th and 4 the matter was set for hearing in September. 5 The actions and inactions of the 6 district which led to the overflow and resulting 7 discharge of untreated waste into homes and 8 surface waters which ultimately reached the 9 Pacific Ocean was a violation of the district's 10 NPDS, the National Pollution Discharge Elimination 11 System permit and the sanitary sewer order. 12 This is a slide, a photograph that was 13 provided to us by the district. Here you'll see 14 it's comprised of penalties for discharge 15 violations, it also includes \$63,000 for 16 nondischarge violations. These violations arise 17 because of the district's failure to properly 18 investigate and report the overflow that occurred 19 in private residences. The backups in the private 20 residences were clearly caused by the district's 21 overflow on December 19th and 20th. 22 Under the sanitary sewer order the 23 district was required to report NC waste, and to 24 track these types of spills and makes them 25 publicly available. However, the district has</p> <p style="text-align: right;">Page 129</p>

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<p>1 claimed that these spills were instead private 2 lateral sewer discharges, PLSDs, caused by 3 problems or failures within the homeowner's sewer 4 lateral, not owned or maintained by the district. 5 And while the district recorded at 6 various times the number of difference homes being 7 affected, our investigation confirmed 11 separate 8 residences experienced sewer backups shown on the 9 slide. Where a sewage backup inside the home, 10 either from a toilet, sink or tub or a combination 11 of those three. The integrity of the 12 self-reporting program that we have with CIWQS 13 depends on the accuracy of information submitted 14 by the discharger such as the district. 15 The language in the actual sanitary 16 sewer order shown here, it clearly states that the 17 district is required to report these spills 18 because it caused the spill. A sanitary sewer 19 overflow here in the slide is defined as, and I'll 20 read it, wastewater backup into buildings and on 21 private property that are caused by blockages or 22 flow conditions within the publicly owned portion 23 of the sanitary sewer system. 24 Because the district failed to 25 investigate and comply with reporting for all</p> <p style="text-align: right;">Page 130</p>	<p>1 MR. FISCHER: That's correct. That is 2 a nondischarge part, we wanted to cover that, it 3 was brought up at the beginning, talking about 4 nondischarge violations. 5 MS. MACEDO: And Ms. DiSimone will go 6 over the discharge violations and how we arrived 7 at the penalty on the greater detail, but I don't 8 have any further questions for you. 9 MR. YOUNG: Ms. Thorme. 10 11 CROSS-EXAMINATION 12 BY MS. THORME: 13 Q. Thank you. Good morning, Mr. Fischer. 14 Make sure we're still in the morning. Were you 15 the primary author of -- can we get it turned over 16 to us so we can -- were you the primary author of 17 Exhibit 1, the technical report? 18 A. I was one of the authors of that 19 report. 20 Q. And who else was an author? 21 A. Leo Sarmiento and Dr. Matthew Buffleben 22 who are both in the room here. Matthew's here and 23 Leo's here. 24 Q. Okay. And are you a civil engineer? 25 A. I'm a mechanical -- a registered</p> <p style="text-align: right;">Page 132</p>
<p>1 known sewer backups 401 days late for the 2 certification we included the \$63,000 penalty. 3 The maximum penalty could have been assessed at 4 \$2.4 million; however, the prosecution team 5 exercised discretion to collapse each of the 6 violations to a maximum of 38 each yielding a 7 \$63,000 penalty here. This penalty affects 8 reporting violations only for six residential 9 backups that the district admits occurred at all 10 and certified late as private lateral through the 11 dischargers. 12 To the extent the prosecution team 13 later discovered additional five backups that were 14 confirmed by interviewing residents, that should 15 be reported by the district and CIWQS, and those 16 are also subject to penalties. 17 Thank you, and I'd be happy to answer 18 any questions at this time that you may have. 19 MR. YOUNG: Ms. Macedo, do you have any 20 further questions for him or is it now 21 cross-examination time? 22 MS. MACEDO: Yeah, it's cross. I guess 23 on this slide I just wanted to clarify that the 24 maximum penalty, Mr. Fischer, is for reporting 25 violations only and not the discharge violations?</p> <p style="text-align: right;">Page 131</p>	<p>1 mechanical engineer for the State of California. 2 Q. Okay. And so is it within your 3 professional specialty to render a professional 4 opinion in a matter of a civil engineering 5 nature? 6 A. Please explain that. I don't 7 understand that question. 8 Q. Well, it's my understanding that it's 9 separated out by categories in engineering, so 10 there's civil, there's electrical, it's kind of 11 like a doctor, you know, where you're a brain 12 surgeon and not delivering babies, that kind of 13 thing. 14 A. I don't have an answer for you. Are 15 you saying that I shouldn't have stamped this 16 report, is that what you're asking me? 17 Q. I'm just asking what the limitations of 18 your engineering skills are and do they cross into 19 the civil engineering? 20 A. We have a registered civil engineer 21 registered on this report. I'll certainly delve 22 into those areas. Dr. Matthew Buffleben is a 23 registered civil engineer. 24 Q. Have you ever worked for a city or a 25 sanitation district?</p> <p style="text-align: right;">Page 133</p>

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1 A. No, I have not.
2 **Q. Has Mr. Sarmiento?**
3 A. Yes, he has.
4 **Q. Okay. And --**
5 A. Extensively.
6 **Q. He's not testifying here today, though,**
7 **is he?**
8 A. He's not testifying here today.
9 **Q. How many sewer spills have you dealt**
10 **with personally?**
11 A. Are you talking about SSOs, all of them
12 or are you talking about sewer spills in homes or
13 are you talking about sewer spills from collection
14 systems?
15 **Q. I'm talking about how many sewer spills**
16 **have you responded on the day that a spill has**
17 **happened?**
18 A. I'd have to say none on the day that
19 it's happened.
20 **Q. So how many sewer spills have you**
21 **actually estimated volumes for besides this**
22 **case?**
23 MS. MACEDO: I'm going to object to the
24 extent that you're questioning Mr. Fischer about
25 the volume of the spills. We designated

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1 Dr. Buffleben on that subject.
2 MR. YOUNG: But I think she can ask the
3 question and if he can't answer the question --
4 MS. MACEDO: I'm happy to let him
5 answer, but we did describe areas of testimony and
6 Mr. Fischer was not designated on that subject.
7 MR. YOUNG: Okay. But his name is on
8 this report, right? It does contain that
9 information.
10 MS. MACEDO: Okay. This information
11 will be covered -- I mean, to the extent that we
12 were going to present our entire case and then
13 allow the witnesses to be cross-examined as a
14 team, Dr. Buffleben is going to cover extensively
15 how our methodologies differ, so I'm going to
16 allow Mr. Fischer to answer, but if he wants to
17 defer to Dr. Buffleben he can.
18 MR. FISCHER: I would like to defer to
19 Dr. Buffleben, but I can tell you that I've done
20 over 30 inspections, investigations of my own
21 myself, and done about 50 at the State Water Board
22 the last few years. And so it would be hazardous
23 for me to even attempt to say how many I've been
24 involved in and the calculations, numerous.
25 /////

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1 BY MS. THORME:
2 **Q. So you've actually done volume**
3 **calculations for those spills where you've**
4 **investigated?**
5 A. Yes.
6 **Q. Okay. And how many of those spills**
7 **were during flood events?**
8 A. I don't know.
9 **Q. Okay. And how many sewer spill**
10 **enforcement actions have you worked on?**
11 A. Again, out of the 30 numerous on-site,
12 you know, investigations, inspections I've done
13 there's been a handful, I can't give you an exact
14 number, probably between five and ten.
15 **Q. Okay. And how many times in those 30**
16 **cases that you've worked on has the water board**
17 **questioned the sewer system operator spill**
18 **volumes?**
19 A. I can tell you this, that the whole
20 purpose of these inspections are verifying the
21 truth of what's being reported into our database
22 system. So we go out there to verify what we have
23 certified in our database matches what the records
24 say, and it doesn't always line up. So that's
25 mostly what we do. In terms of the number I don't

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1 have a number for you, but numerous.
2 **Q. But normally in these sewer spill cases**
3 **isn't the volume really related to the estimated**
4 **start and stop time?**
5 A. It may be; however, what we're finding
6 as the office of enforcement joined at the head
7 with our division of water quality who runs this
8 program is the majority of the spills we
9 investigate do not have accurate estimations on
10 the books what actually happened. And this is the
11 first case I'm aware of where we actually did
12 extensive engineering analysis on our own to look
13 at everything that was submitted to us. Often we
14 don't get these records; so --
15 **Q. But in a sewer spill case they have to**
16 **report within two hours of the spill starting;**
17 **isn't that correct?**
18 A. That's not correct.
19 **Q. Why is that not correct?**
20 A. If you read the amended MRP at the
21 water quality board 008-0002-EXEC page --
22 Attachment A, Page 1 it says, "For any discharges
23 of sewage that result in a discharge to a drainage
24 channel or a service water, discharger shall as
25 soon as possible, but not later than two hours

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1 after becoming aware of discharge, notify." Now,
2 important, "Notify the state OES, local health and
3 the regional water board."
4 **Q. Okay. So someone has to be notified**
5 **within two hours of becoming aware, and then if**
6 **it's a category one spill they have to have their**
7 **certification in within 15 days; isn't that**
8 **correct?**
9 A. They have to have additional stuff in
10 there, they have to have a draft report
11 requirement within three calendars days or a
12 certified report in the system with CIWQS within
13 15 calendar days.
14 **Q. So that is a pretty compressed schedule**
15 **to get all of that information into CIWQS?**
16 A. If you say so. I don't agree with that
17 and so --
18 **Q. But my point is, is they're scrambling,**
19 **number one, to stop the spill; number two, to**
20 **notify people within two hours of becoming aware,**
21 **get their three-day report in, get their CIWQS**
22 **stuff in and at the same time they're**
23 **investigating all of the facts. That is on the**
24 **ground running to get that done, whereas the**
25 **office of enforcement can come in later and has**

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1 **the benefit of additional time to make tweaks to**
2 **estimates that might not be available to --**
3 MS. MACEDO: No question pending.
4 BY MS. THORME:
5 **Q. -- to the district; isn't that**
6 **correct?**
7 A. As the office of enforcement action
8 we're going to look at whatever the discharger
9 does. If they're up to their eyeballs with one
10 person out there running around trying to get
11 everything done it may be a violation and we'd
12 consider that in the enforcement action. It's not
13 what's being discussed here today.
14 **Q. But isn't essentially the office of**
15 **enforcement second guessing the estimates that**
16 **were made by the district?**
17 A. Every investigation that we conduct we
18 went to get to the truth of whether the spill
19 volume was reported correctly. So this is no
20 different than any other case that we did. We
21 take a look what was submitted to us, if we don't
22 agree with it we do our own analysis.
23 **Q. But why would anyone want to be a sewer**
24 **system operator if they make their best estimate**
25 **and someone comes in and second guesses them?**

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1 A. That's their job to ensure that this
2 regulatory program has -- is beneficial and is
3 working. And like I said earlier, we work in
4 large step with the people that manage this
5 program, I used to manage this program, the longer
6 I have a history in it, we're out there to verify
7 again what's been certified under penalty of
8 perjury into our data system is true and correct
9 when we go out to the site. If we don't agree
10 with it we'll do our own analysis and come up with
11 our own analysis of what was we think is true and
12 correct.
13 **Q. Okay. Have you ever seen a case in**
14 **California where the upset defense has been**
15 **allowed?**
16 A. Are you talking about both combined
17 sewer systems that take both storm water and
18 sanitary or just separate sanitary sewer systems?
19 **Q. In any case.**
20 A. No, I have not.
21 **Q. Okay. Are you aware that there's**
22 **already a shortage of qualified sewer system and**
23 **treatment plant operators in California?**
24 A. No, I'm not aware of that.
25 **Q. Okay. How many times has the office of**

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1 **enforcement performed a volume calculation for a**
2 **sewer spill?**
3 A. I mentioned it earlier, I think there
4 would be too many for me to count. Like I said,
5 30 sites, some sites can have up to a thousand
6 spills. So, you know, what we typically do when
7 we did out, to look at all thousand is
8 impractical, we might look at ten. So it would be
9 numerous; however, I can tell you that for the ten
10 we do check we look at all the records and we
11 interview all the people involved with the spill,
12 determining the start time as mentioned earlier,
13 other factors that we need to evaluate whether
14 it's truthful what they reported.
15 **Q. Do you conduct sewer spill training?**
16 A. I used to, not anymore.
17 **Q. Okay. Did you present in May of 2011 a**
18 **sanitary sewer overflow reduction program**
19 **training?**
20 A. I don't remember.
21 **Q. Bringing up Exhibit 66, does this look**
22 **familiar to you?**
23 A. I want to just make clear that I'm one
24 of three staff that work on this program. I'm on
25 the enforcement side, we have two other full-time

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1 staff that work on the compliance side. It could
2 be either one of us giving this presentation. I
3 don't see my name on here, it's possible it could
4 have been mine.
5 **Q. But is this coming from the State Water**
6 **Board and their training of operators?**
7 A. We don't train operators as the office
8 of enforcement; however --
9 MR. YOUNG: Mr. Fischer, why don't you
10 just try to answer the question as it's posed as
11 best as you can.
12 THE WITNESS: I would say yes.
13 BY MS. THORME:
14 **Q. If you can go to the next line in that**
15 **training, same page.**
16 A. This is not my presentation, by the
17 way.
18 **Q. But this is training that has been done**
19 **by the State Water Board, and are these various**
20 **methodologies that the State Water Board has**
21 **presented as ways of estimating sewer spills?**
22 A. This is not a complete list, but this
23 is a partial list of ways you could do it. We
24 learn every day there are more and more.
25 **Q. Okay. And the next line on that page,**

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1 please. So this is stating that volumes can be
2 estimated using various approaches, is that true,
3 Mr. Fischer?
4 A. Yes.
5 **Q. Okay. And that the spill circumstances**
6 **may dictate which method is appropriate and**
7 **whether multiple methods need to be used; is that**
8 **correct?**
9 A. Yes.
10 **Q. And that the person estimating the**
11 **spill should make the best judgment on which**
12 **method to use?**
13 A. The person doing it, sure.
14 **Q. Okay. And that there are other**
15 **engineering estimating methods that might be**
16 **used?**
17 A. True.
18 **Q. Okay. And wasn't this training done**
19 **after the sewer spill happened in 2010?**
20 A. It wasn't my presentation, but it
21 appears it's in May 2011, I haven't verified the
22 date, if you say so, okay.
23 **Q. Okay. So given that the district used**
24 **one of these approved methods in the middle slid**
25 **on that page --**

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1 A. Approved, I -- okay.
2 **Q. -- that was recommended, why are they**
3 **being challenged as being wrong?**
4 A. This is not inclusive of every method
5 in the state that you would use to estimate a
6 sewer spill. There's many iterations of what
7 you're looking at here. These are in compliance,
8 you're going to hear about it more later. That's
9 all I have to say.
10 **Q. Okay. Now, you had mentioned that**
11 **there's this sanitary sewer overflow waste**
12 **discharge requirement and I'm going to call that**
13 **SSO WDR.**
14 A. Sure.
15 **Q. Okay. And that SSO WDR is where you**
16 **got the designation of sanitary sewer overflow**
17 **that you referred to in your presentation; is that**
18 **correct?**
19 A. Yes. It's on Page 5 of the order,
20 Section 8 definitions.
21 **Q. Right. So it's on Exhibit 56-5?**
22 A. Can I just check to make sure it's the
23 same?
24 **Q. Sure.**
25 A. I'll assume that it is. We can

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1 continue.
2 **Q. We can pop it up if you want to see**
3 **that.**
4 A. I've got it right in front of me, so no
5 problem.
6 **Q. I just want to make sure that we're**
7 **getting that definition from the same place.**
8 A. Okay.
9 **Q. So you're comfortable that that's in**
10 **the sanitary sewer overflow WDR?**
11 A. Yes.
12 **Q. Then that classifies what a sanitary**
13 **sewer overflow is, and then the monitoring and**
14 **reporting program is a separate document from the**
15 **waste discharge requirements; is that correct?**
16 A. That's correct.
17 **Q. So that is our Exhibit 57. So then**
18 **does that document bring down the different types**
19 **of sewer overflows into different categories?**
20 A. That in fact does.
21 **Q. Okay. So a category one spill, can you**
22 **describe that for me?**
23 A. Category one spill is -- and I'll just
24 read it so there's not any mistakes.
25 **Q. We have it up here in the screen if you**

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1 **want it.**
2 A. It's right here. "All discharges of
3 sewage and ultimate failure in a sanitary sewer
4 system that equal or exceed --
5 **Q. You might want to slow down a little**
6 **bit.**
7 A. I'm sorry. "Discharges that exceed a
8 thousand gallons result in discharge to a drainage
9 channel and/or a service water or discharge into a
10 pipe that was not fully captured and returned to
11 the sanitary sewer system."
12 **Q. Okay. And then if you can go to the**
13 **next page 57-3 there's also a category two spill**
14 **and a private sewer lateral discharge?**
15 A. That's correct. Wait a second.
16 **Q. So basically the category two is any**
17 **other noncategory one spills; is that correct?**
18 A. Anything that didn't go to service
19 water over a thousand gallons or is not fully
20 captured and returned.
21 **Q. And then there are private sewer**
22 **laterals which are generally in-home spills?**
23 A. That is not correct. Those are private
24 lateral sewage discharges defined here in the MRE
25 PLSDs.

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1 **Q. Okay. Aren't many private sewer**
2 **laterals in-home spills?**
3 A. The in-home spill that you're referring
4 to here, can you define that?
5 **Q. No, I'm not referring to any spill.**
6 **I'm just saying in general many private sewer**
7 **lateral discharges are in-home spills?**
8 A. I don't know the answer to that.
9 **Q. Okay. Or they can be from someone's**
10 **clean-out on their lateral; is that correct?**
11 A. Correct.
12 **Q. Okay. So if we can go to Page 4 of**
13 **Exhibit 57, please. Does the sanitary sewer**
14 **overflow WDR require that estimates be given for**
15 **each spill location?**
16 A. No, it does not; however, for
17 wastewater backup into private --
18 **Q. I'm not talking about in-home spills at**
19 **this moment. I'm just talking about the**
20 **requirements of the MR.**
21 A. Well, wastewater backups in buildings
22 on private property, those are defined in the
23 order. Those each individually have to be
24 reported. Nothing else does.
25 **Q. Okay. But if you look at paragraph 9**

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1 **here, don't you have to tell the location of the**
2 **SSO by entering GPS coordinates?**
3 A. I can tell you because we've studied
4 this and we've seen this in practice with many of
5 the audits, many discharges simply had five
6 manhole overflow in one location and that's
7 acceptable at this time in our database.
8 **Q. Okay. So also paragraph G says that**
9 **you have to have the SSO scores which identify a**
10 **manhole clean-out or et cetera. So does that not**
11 **indicate that there's a specific locations for**
12 **each spill that you're supposed to be reporting?**
13 A. That's an example. There could be many
14 other sources.
15 **Q. If you could pull up Exhibit 68 for me,**
16 **please. Doesn't the CIWQS reporting program**
17 **currently require that input from each manhole be**
18 **entered into CIWQS?**
19 A. Like I said earlier, Ms. Thorne, it
20 doesn't require -- the order doesn't require that.
21 CIWQS has been set up to do that, but in practice
22 that's not what happens, and that's not what we
23 have today in the system. If you talk to the
24 program staff and we've talked to them. It's in
25 there both ways. It can be one location even

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1 though it was multiple locations or it can be one
2 individual location and be certified.
3 **Q. So on this it has physical location**
4 **detail, so this is a blank CIWQS score so it**
5 **doesn't have anything entered into it, but at**
6 **paragraph three it says spill location name, four,**
7 **latitude of spill location, five, longitude of**
8 **spill location. If you have multiple spill**
9 **locations you're saying that they don't have to**
10 **enter each one of those spill locations where they**
11 **know it's coming out of a manhole at a certain**
12 **location?**
13 A. I'm saying if you talk to the program
14 staff right now they are finding it acceptable in
15 one central location if you have multiple for the
16 non-wastewater backups in the homes that are not
17 defined in the order.
18 **Q. Okay. But how would you put that into**
19 **the form?**
20 A. Like I mentioned earlier, it's up to
21 the discharger to do this. We have set up a
22 database to the individual; however, there's
23 nothing in the order that says every single
24 location must go in to CIWQS independently.
25 **Q. So you never instructed anyone at the**

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1 district to input each manhole's data
2 separately?
3 A. I don't actually remember what I told
4 you now.
5 **Q. Can I have Exhibit 46-9, please.**
6 **Paragraph two, so this is an e-mail from Heather**
7 **Billing who is part of the district's engineering**
8 **staff, and the second paragraph says, "My**
9 **understanding from Jim is that SLO CSD needs to**
10 **report the SSOs from each of the 21 manholes**
11 **separately." Did you not tell the district that?**
12 A. Perhaps I did, but it's not required.
13 **Q. Okay. And are all of the manholes that**
14 **spilled during this event within the district's**
15 **jurisdiction?**
16 A. Talking about the manhole locations
17 that have been reported to us by the district?
18 **Q. Yes.**
19 A. They are beyond the district's trump
20 sewer system, some of them.
21 **Q. So were some of them within the**
22 **jurisdiction of the satellite collection system?**
23 A. That's correct -- well, some of them
24 overflowed in locations reported to us beyond the
25 district's trump sewer system.

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1 **Q. And does the district NPDE permit for**
2 **the wastewater treatment plant extend to the**
3 **satellite collection systems?**
4 A. I don't know.
5 **Q. Okay. We can pull up Exhibit 28-6. If**
6 **you could look at the second paragraph that is**
7 **highlighted here. And does that state that the**
8 **satellite collection systems retain ownership and**
9 **direct responsibility for the wastewater**
10 **collection and transport systems up to the point**
11 **of discharge into interceptors owned and operated**
12 **by the discharger?**
13 A. Yes, it does.
14 **Q. And is the district registered**
15 **separately under the SSO WDR from the satellite**
16 **collection systems?**
17 A. Yes, they are.
18 **Q. Okay. Because I think you testified**
19 **earlier that the collection systems are regulated**
20 **separately under that order?**
21 A. Both collection systems are, yes.
22 **Q. Yes. And is the office of enforcement**
23 **now trying to modify the monitoring or reporting**
24 **program for the SSO WDR to allow this event base**
25 **reporting SO that individual manholes no longer**

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1 **need to be reported if the spill occurs from a**
2 **single event?**
3 A. That's incorrect. The office of
4 enforcement, my job is not to do anything with the
5 program; however, like I said earlier, I
6 represented earlier to you, I'm joined at the hip
7 literally with our regulatory program managers.
8 They're the ones in the driver seat, we are the
9 ones in the field collecting the information,
10 based on our experience, given the
11 recommendations, but they are ultimately the ones
12 who make the decision.
13 **Q. Is that now a new recommendation in the**
14 **new monitoring or reporting program?**
15 A. Yes, it is.
16 **Q. Okay. So if you could look at**
17 **Exhibit 59-7, please. So this is the new proposed**
18 **monitoring reporting. If you look at paragraph**
19 **two, so this says that for reporting purposes if**
20 **one SSO event results in multiple appearance**
21 **points the enrollee shall complete one SSO report**
22 **in CIWQS. But that's not currently in law; is**
23 **that correct?**
24 A. That's correct. Can I just pause for
25 just a second while I look at something evidence

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1 related to that in this proposal, is that
2 acceptable?
3 **Q. Sure.**
4 A. Okay. So this is in the draft;
5 however, if you go to Page 16, you can pull that
6 up. At the top of the page item No. 8-C, the
7 draft has required in the draft, I point out,
8 description of address of SSO failure location or
9 locations. We still want to know what was
10 affected in an area fashion there, regardless of
11 what was entered into the database.
12 **Q. Okay. But this proposal was not around**
13 **in December of 2010; is that correct?**
14 A. That's correct.
15 **Q. Okay. And would this encompass private**
16 **sewer laterals that are also part of a single**
17 **event?**
18 A. I don't know. Talking about a private
19 lateral sewage discharge event --
20 **Q. Yes.**
21 A. -- reports? I don't know.
22 **Q. And is it your understanding that**
23 **private sewer lateral discharges are going to**
24 **continue to be voluntarily reported under this new**
25 **monitoring reporting program?**

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1 A. Yeah, it's currently stated for the
2 board the private lateral sewage discharges that
3 are not caused by failure flow condition within a
4 sanitary sewer system publicly owned are proposed
5 to be voluntarily reported in to CIWQS. So yeah,
6 we're not mandating those all have to be reported
7 in to CIWQS; however, we're still looking for the
8 records for those sessions here about record
9 keeping that's related just for the record.

10 **Q. Okay. And when was the ACL complaint**
11 **issued in this case?**

12 A. The ACL was issued on June 19th,
13 2012.

14 **Q. And after that complaint was issued did**
15 **staff and legal counsel from the office of**
16 **enforcement go down to Oceano in July and August**
17 **of this year?**

18 A. Yes, we did.

19 **Q. Did you talk to individual homeowners**
20 **trying to determine if there were more in-home**
21 **discharges?**

22 A. The office of enforcement's
23 investigative process includes taking more than
24 one staff in the field to investigate whether or
25 not -- what the impact from the spill was, period.

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1 Whether it was private lateral -- I'm sorry,
2 wastewater map in the home --

3 MR. YOUNG: Excuse me, could you just
4 give her a direct answer? It sounded like a yes
5 or no to me.

6 THE WITNESS: Okay. Yes.

7 BY MS. THORME:

8 **Q. Okay. And why would you make so much**
9 **effort investigating in-home spills if they're not**
10 **required to be reported?**

11 A. That's where we differ, and so the
12 answer is those are required to be reported and
13 we're going to explain more about that later.

14 **Q. Okay. And if you were so concerned**
15 **about these in-home spills why didn't you come**
16 **down to this investigation right after the spill**
17 **event when these issues were very clear in**
18 **people's mind and not a year and a half later?**

19 A. This is a complex investigation with a
20 lot of different components to it. We never
21 stopped investigating until the complaint's
22 issued, this is the way it happened. We did not
23 get word from the regional board right when the
24 spill happened to come out and check it out.
25 There was a delay in that. We had numerous

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1 meetings with the district back and forth. This
2 process took a year and a half, so I don't have an
3 answer for you.

4 **Q. Are you aware that the district**
5 **undertook a great deal of outrage to try to**
6 **determine where the private home spills were?**

7 A. No, the only evidence that I saw from
8 the district asked about if you saw a manhole
9 overflowing.

10 **Q. Can we have Exhibit 67, please. Have**
11 **you seen this exhibit, Mr. Fischer?**

12 A. I have.

13 **Q. Okay. So what do you think this**
14 **document is?**

15 A. This is a spreadsheet that was given to
16 us of some of the investigative work done by the
17 district to basically look at the different homes
18 in the area if they were impacted by sewage.

19 **Q. So in the ones that were in read that**
20 **were the ones that were reported in the CIWQS**
21 **where they had information they reported those**
22 **in-home spills?**

23 A. Our evidence I believe we only have six
24 that were reported as private lateral sewage
25 discharges in CIWQS, so that looks like more than

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1 six from here.

2 **Q. When did the district report in-home**
3 **spills that it was aware of?**

4 A. The certified documents that we have
5 are March 6th, 2012 certified by the district for
6 CIWQS for the wastewater backup to the private
7 residences, again, certified as private lateral
8 discharge reports. We don't have -- that's what
9 we have, excuse me.

10 **Q. Okay. And can we get Exhibit 7,**
11 **please, the first page. So this is a spreadsheet,**
12 **we have no idea who prepared this or where it came**
13 **from, but it says on there "SSO volumes certified**
14 **in CIWQS as of 10/5/11." Where did that date come**
15 **from?**

16 A. I don't know.

17 **Q. If you could get the next page for me,**
18 **please. This is one of the CIWQS reports for one**
19 **of the in-home spills, that if you could blow up**
20 **the first half of that for me, please. So this**
21 **states that the draft was submitted on 3/6/12,**
22 **which is the first version of the draft that you**
23 **see in paragraph No. 2, and it was certified the**
24 **same day. So I believe the allegation was that**
25 **they waited to certify their reports and it was**

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1 **untimely certification. So if it was reported and**
2 **certified on the same day how is that an untimely**
3 **certification?**
4 A. Let me read to you the actual language
5 out of the permit, that's what we go by. And it
6 says in the monitoring reporting program
7 2008-0002-EXEC, Page 2 it says, "Category two
8 SSOs. All SSOs that meet the above criteria for
9 category two SSOs must be reported to --"
10 MR. YOUNG: Slow down --
11 MS. THORME: We can pull this out so
12 the board members can see it.
13 MR. YOUNG: -- for the court reporter.
14 BY MS. THORME:
15 **Q. Paragraph five and six.**
16 A. Okay. No. 5 here, "All SSOs that meet
17 the above criteria for category two SSOs must be
18 reported to the online SSO database 30 days after
19 the end of the calendar month in which the SSO
20 occurs."
21 **Q. And how do you categorize these as**
22 **category two spills?**
23 A. These are spills that don't meet the
24 criteria for category ones as certified by the
25 district and that's what we want.

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1 **Q. But in paragraph six doesn't it say,**
2 **"All sewage discharge that meet the above criteria**
3 **for private sewer lateral discharges may be**
4 **reported"?**
5 A. Okay. That's the part we're missing
6 here. Let's go to page -- the sanitary order. Do
7 you have that still? Okay. I'm sorry, it's in
8 the same document on the top of Page 2. Actually
9 it's above this. Yeah. No. 3, this is private
10 lateral sewage discharges, sewage discharges that
11 are caused by blockages or other problems within
12 privately owned laterals.
13 **Q. When you interviewed homeowners during**
14 **your investigation did you inquire whether those**
15 **homeowners each had a backflow prevention device**
16 **as required a state law and county ordinance?**
17 MS. MACEDO: I'm going to object to the
18 extent it calls for legal conclusion.
19 You can answer whether you interviewed
20 them.
21 THE WITNESS: I don't believe we asked
22 everybody that question, no.
23 BY MS. THORME:
24 **Q. Did you confirm the existence of these**
25 **devices in each of the 11 instances that you said**

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1 **were category two spills?**
2 A. No.
3 **Q. Okay. Did you check to see it there**
4 **were permits for those devices at the county?**
5 A. No, we didn't.
6 **Q. If the reason there was a sewer backup**
7 **into the house was the lack of a required backflow**
8 **device, then how was that the district's**
9 **responsibility?**
10 A. My response to that is a backflow
11 prevention device can be a sewer relief valve that
12 allows sewage to come out of from garden into the
13 home, the clean-out. It doesn't mean -- again, we
14 had determined that these are SSOs that were not
15 reported by the district. These were not private
16 sewage lateral sewage discharges as defined here
17 on Page 2 of the MRP.
18 **Q. I'm not sure that answers my question.**
19 **Can you read that question back for me,**
20 **please.**
21 **(Record read.)**
22 THE WITNESS: The order says what it
23 said. I don't have the authority to change the
24 order, so we look at the order and the orders says
25 the SSO caused by the failure in the publicly

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1 owned portion of the sanitary sewer system. As
2 stated before, that's how I came up with the
3 determination.
4 BY MS. THORME:
5 **Q. But the definition of private lateral**
6 **sewage discharge says problems within a privately**
7 **owned lateral. So if the problem in the privately**
8 **owned lateral is they don't have a backflow**
9 **prevention device to keep the sewage when it's**
10 **surcharging in the main out of the house, that was**
11 **our argument is that that is not the district's**
12 **responsibility.**
13 **So I mean, maybe it's semantical or --**
14 **but there are two different definition here. So**
15 **one of the questions I have for you, if you can**
16 **put up Exhibit 480-2 is you had showed this**
17 **earlier and had little circles around things, and**
18 **we don't have that document, but it looks to me**
19 **that there's approximately 32 homes in these two**
20 **areas.**
21 A. Sounds about right.
22 **Q. So your investigation found 11 of them**
23 **had them. So potentially the other houses have**
24 **backflow prevention devices and didn't flood. We**
25 **need to know why all the houses didn't flood. Do**

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<p>1 you have an answer for that?</p> <p>2 A. I think you're going to hear about this</p> <p>3 a little bit more later when Matthew talks about</p> <p>4 the volume. So I don't have an answer for you</p> <p>5 right now.</p> <p>6 Q. Okay. So in your technical report if</p> <p>7 we could go to Exhibit 1, Page 18, please. So it</p> <p>8 says, "As required under the amended MRP</p> <p>9 Section A-6, the discharger failed to certify each</p> <p>10 of the six individual sewer backup reports in</p> <p>11 CIWQS database within 30 day after the end of the</p> <p>12 calendar month." So if we could switch back and</p> <p>13 pull up side by side A-6 on 57-3.</p> <p>14 So A-6 is the private sewer lateral</p> <p>15 discharger. So on the one hand you're telling us</p> <p>16 that it's not a private sewer lateral discharge</p> <p>17 and in your technical report it's saying that it</p> <p>18 was required for them to certify these backups</p> <p>19 within 30 days under A-6 which says that it may be</p> <p>20 reported and there's no certification requirement.</p> <p>21 Can you explain that, please?</p> <p>22 A. Can I see the technical report?</p> <p>23 Q. Let me switch it back.</p> <p>24 A. You know, I believe we already</p> <p>25 submitted some corrections that are oversights in</p> <p style="text-align: right;">Page 162</p>	<p>1 MR. BROSS: I'm Larry Bross. I do live</p> <p>2 in Oceano. I didn't have a back spill. I'm</p> <p>3 concerned about the fact that only the SAND</p> <p>4 district was chosen by the prosecution team for</p> <p>5 liability here, and I think it goes beyond the</p> <p>6 SAND district. I think the county -- because you</p> <p>7 see, if you don't have a flood you won't have</p> <p>8 these problems. And I was here in '82 when we had</p> <p>9 a greater storm than we had then. It was the</p> <p>10 perfect storm, we had the high tide and the storm</p> <p>11 coming at the same time. That's when Pismo pier</p> <p>12 went down. None of this was flooded, none of it.</p> <p>13 Okay. And understand this, that nothing was</p> <p>14 flooded by the Arroyo Grande Creek, it's Meadow</p> <p>15 Creek that -- I haven't got enough time to explain</p> <p>16 to you, but it's Meadow Creek that creates this</p> <p>17 situation. And it's the gate in the levy that is</p> <p>18 the gravity gate, because you see, Meadow Creek</p> <p>19 runs into the Arroyo Grande Creek under the levy.</p> <p>20 And I was there in '82 when we lifted the gate and</p> <p>21 the water flowed out and there was no story.</p> <p>22 Okay.</p> <p>23 And the county could have done the same</p> <p>24 thing this time, they didn't. So I believe that</p> <p>25 they are liable. All right. And go from there --</p> <p style="text-align: right;">Page 164</p>
<p>1 this report in some lengthy amount of documents,</p> <p>2 so I don't know if that was included in the</p> <p>3 corrections or not, but we'll take a look at it</p> <p>4 right now.</p> <p>5 MR. BUFFLEBEN: Yes.</p> <p>6 THE WITNESS: What page is that,</p> <p>7 Melissa?</p> <p>8 MS. THORME: Page 18. Then can we</p> <p>9 bring up the administrative civil liability</p> <p>10 complaint, please? Page 6, paragraph 24. It must</p> <p>11 be after that.</p> <p>12 MR. YOUNG: I think this is a good time</p> <p>13 for us to take a break.</p> <p>14 MS. THORME: Okay.</p> <p>15 MR. YOUNG: So we'll resume --</p> <p>16 actually, what we need to do is we have three</p> <p>17 people that I'm going to take out of order, then</p> <p>18 we'll take our lunch break. You probably have a</p> <p>19 lot more for him, I don't know, but I've got to</p> <p>20 call a timeout at some point on him and we'll</p> <p>21 switch to the three people that have raised their</p> <p>22 hands.</p> <p>23 Sir, we'll start with you, if you can</p> <p>24 come over here. So you'll each have two minutes</p> <p>25 each. Okay. And please state your name.</p> <p style="text-align: right;">Page 163</p>	<p>1 and let me say one more thing. Oceano has a lot</p> <p>2 of very poor people there. And I don't care what</p> <p>3 you say, the rates will be raised. A resident in</p> <p>4 Oceano just looks at the bill, it's water which</p> <p>5 has just been raised. There are going to be</p> <p>6 people, farm workers who are going to be losing</p> <p>7 their homes, okay, and not going to be able to pay</p> <p>8 because of this action. Thank you.</p> <p>9 MR. YOUNG: Thank you, Mr. Bross.</p> <p>10 Okay. Julie Sacker.</p> <p>11 MS. STACKER: Good afternoon. My name</p> <p>12 is Julie Stacker and I did swear to tell the</p> <p>13 truth. I didn't think I had anything to offer</p> <p>14 today's proceedings until I read the letter from</p> <p>15 Mayor Ferrera to your board, specifically with</p> <p>16 item No. 2, he tries to say derogatory things</p> <p>17 about the prosecution. What he says is something</p> <p>18 about how a local news agency acquired letters</p> <p>19 from assemblyman Katcho Achadjian. I was in a</p> <p>20 sanitation district meeting where Mr. Wallace</p> <p>21 spoke about its asking our legislatures</p> <p>22 Assemblyman Achadjian and Senator Blakeslee to</p> <p>23 write on behalf of the district.</p> <p>24 I was the source who called Karen Velie</p> <p>25 of Cal Coast News and told her that the</p> <p style="text-align: right;">Page 165</p>

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<p>1 legislatures had been contacted, and it is my 2 understanding that she got the letters from the 3 legislatures that they are public record. 4 Something that occurred to me today in 5 your earliest testimony from the electrician, I 6 did listen to the August 15th south county -- 7 south SAND district board meeting, there was an 8 electrical item on their agenda. They had taken 9 three bids and they were awarding a contract. One 10 of the board members asked the current 11 superintendent if he had contacted Thoma Electric 12 to bid on the current job, and Mr. Bellargio the 13 current superintendent said that his son worked 14 for Thoma, and that he did not want there to 15 appear to be a conflict. So I don't know if that 16 has ever been disclosed, the relationship with 17 Mr. Thoma and the Bellargio family. 18 MR. YOUNG: Thank you for your 19 comments, Ms. Stacker. 20 Last speaker for this morning. Sir, 21 can you identify yourself? 22 MR. EHENS: I'm Steve Ehens, I live at 23 547 Security Court. 24 MR. YOUNG: Your name again? 25 MR. EHENS: Steve Ehens, E-h-e-n-s. I</p> <p style="text-align: right;">Page 166</p>	<p>1 we're I going to have this again. 2 If it was to rain again it would happen 3 again, right now. I don't even think they've got 4 far enough. If we got another foot and a half of 5 water like we had that day or that night it would 6 happen again. Everybody on the island, as we call 7 it, got sick. I got sick, my son got sick, all 8 the neighbors got sick, I assume there are many 9 names of people that got sick. 10 This isn't like who's going to pay the 11 bill, we're dealing with people's lives here, you 12 know. People are getting sick from sewage. 13 Whatever needs to be done needs to be done and it 14 needs to be done quickly. 15 And as for the fine, I think you should 16 go back into the neighborhood to address the 17 environmental impact that happened and to take 18 care of these flood control channels. And a lot 19 of the egrets and the herons and the stuff that we 20 used to enjoy would come back. And we'd also have 21 a way for the water to get out of the 22 neighborhood. If we can't get it out of the 23 neighborhood it's going to flood the sanitation 24 district and we'll get it again. Thanks for your 25 time.</p> <p style="text-align: right;">Page 168</p>
<p>1 live at 547 Security Court and I was one of those 2 homes that (inaudible) top of the sink and the 3 bath tub. I believe my home is on a divert valve 4 system, I'm not really sure. It doesn't really 5 matter, we were overwhelmed with it. It was a 6 foot and a half of water, then right outside my 7 door about ten feet night is a sewer manhole which 8 was gushing out there. So I was getting it from 9 both ways. 10 I'm not really sure what of the long 11 and short of all the legal stuff, what it is, but 12 I do know this is a twofold problem. One of them 13 is the sewer plant is not up to snuff, that's the 14 bottom line. And another thing is it's 15 maintenance, they're not maintaining the control 16 channels, the flood channels that are both on the 17 sanitation property, and adjacent to it to get the 18 water out of the area. If the water hadn't been 19 there the pumps wouldn't have failed. 20 I mean, I've been to every board 21 meeting that I could get away from work to go to, 22 and they keep telling me it's this person's 23 problem, the state's problem, this or that, but 24 until you guys correct this flooding issue that we 25 have in the control -- flood control district</p> <p style="text-align: right;">Page 167</p>	<p>1 MR. YOUNG: Thank you for your 2 comments. Okay. Next we will take our lunch 3 break. 4 (Lunch recess taken.) 5 MS. MACEDO: I'm going to make a 6 statement for the record then I believe we're 7 being to resume with Ms. Thorme's cross. 8 MS. THORME: Correct. 9 MS. MACEDO: Okay. So Ms. Thorme 10 before lunch was questioning Mr. Fischer about 11 what appeared to be a typographical error, and the 12 prosecution team took a look at the documents over 13 lunch and confirmed that there did appear to be a 14 typographical error, and that error appeared in 15 both the complaint and the technical reports. And 16 rather than attempt to argue that the meaning and 17 the intent of the violation was clear in our 18 briefing we will not do so at this late date. And 19 we will forego the \$63,000 in reporting violation. 20 In terms of the penalty that will reduce it by 21 \$63,000. We would prefer for this not to have 22 precedential value, so our arguments regarding 23 whether the spills have to be reported or whether 24 they are PLSD type spills is not an issue for the 25 board to consider. And that's the statement.</p> <p style="text-align: right;">Page 169</p>

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1 MS. JAHR: I just want to make sure if
2 the board members have any questions about what
3 will now not be considered violations or what we
4 are looking at now.
5 MR. WOLFF: That's fine.
6 MR. YOUNG: Okay. So we will resume
7 then with Mr. Fischer.
8 MS. MACEDO: Yes.
9 MR. YOUNG: And Ms. Thorme was
10 continuing her cross-examination.
11 MS. THORME: Yes. Thank you.
12
13 CROSS-EXAMINATION (resumed)
14 BY MS. THORME:
15 **Q. Mr. Fischer, prior to this enforcement**
16 **action did the office of enforcement also**
17 **investigate Mr. Jeff Appleton for allegedly**
18 **violating the operator certification**
19 **regulations?**
20 A. Yes.
21 **Q. And did the office of enforcement also**
22 **send a notice of violation to the district for**
23 **issues related to their O&M, operation and**
24 **maintenance manual and standard operating**
25 **procedures?**

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1 A. Yes.
2 **Q. And did the district revise its**
3 **operating and maintenance manual and standard**
4 **operating procedures in October of 2010?**
5 A. Yes.
6 **Q. And did the district send those revised**
7 **documents to the office of enforcement on**
8 **November 1st, 2010?**
9 A. I don't remember the date.
10 **Q. Can I have Exhibit 14, page 1, please.**
11 **That has a date of November 1st, 2010. If you can**
12 **put up Page 10, please. And the CCs attach- -- or**
13 **not CCs, the attachments. So does that refresh**
14 **your recollection as to whether those were sent on**
15 **November 1st, 2010?**
16 A. Those weren't sent to me, but I'm
17 familiar with it.
18 **Q. Okay. And since you have those**
19 **documents on November 1st, 2010 before the spill,**
20 **did you point out at that time that the district**
21 **was correctly operating and maintaining their**
22 **plant?**
23 A. I don't know. They were sent to me.
24 **Q. Okay. It's a question for the**
25 **prosecution team, so did you point out any errors**

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1 **in the standard operating procedures at that**
2 **point?**
3 MS. MACEDO: No, I apologize. You
4 clarified that the person being cross-examined is
5 the only one who's going to answer your
6 questions.
7 MS. THORME: Well, if he doesn't know
8 then I would ask that he tell me who on the
9 prosecution team would know so that I can not have
10 to ask everybody the same question.
11 MS. MACEDO: If someone is going to
12 answer that question later we will answer it, but
13 he doesn't know.
14 MR. YOUNG: Well, he needs to answer
15 the question.
16 MS. MACEDO: Yeah, he didn't --
17 THE WITNESS: I don't know.
18 BY MS. THORME:
19 **Q. Who would know?**
20 A. I don't know.
21 **Q. And did you provide the local residents**
22 **that you interviewed with any information?**
23 A. I don't understand your question. What
24 kind of information?
25 **Q. Any kind of information about this**

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1 **case.**
2 A. Yes.
3 **Q. Okay. We've marked this as Exhibit**
4 **115, and I can provide a copy. All right. Just**
5 **so for disclosure we redacted the names to who**
6 **these e-mails were given, but is this an e-mail**
7 **that -- are these both e-mails that you sent?**
8 A. Yes, they appear to be.
9 **Q. Okay. So why were you sending -- let's**
10 **go to the second page first. Why were you sending**
11 **out the district's objections to people?**
12 A. I was advised these were public
13 documents.
14 **Q. Okay. And why do you think that the**
15 **residents would need those documents and why**
16 **couldn't they just be put on the website for**
17 **everyone to have?**
18 A. I don't know.
19 **Q. Okay. Then on the first page that this**
20 **is an announcement about a meeting that you had on**
21 **Wednesday night at Old Juan's Cantina restaurant.**
22 **Did you actually hold that meeting?**
23 A. Yes.
24 **Q. Okay. How many people came to that**
25 **meeting?**

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1 A. Four.
2 **Q. Okay. What was the intent of that**
3 **meeting?**
4 A. Provide information.
5 **Q. Okay. And did you or anyone on the**
6 **prosecution team provide people with a sample**
7 **letter to send in?**
8 A. No, we did not.
9 **Q. Did you or anyone on the prosecution**
10 **team ever allude to the ability to maybe get part**
11 **of the fine for local residents?**
12 A. Absolutely not.
13 MS. THORME: No more questions.
14 MS. MACEDO: Redirect?
15 MR. YOUNG: Yes.
16
17 REDIRECT EXAMINATION
18 BY MS. MACEDO:
19 **Q. Mr. Fischer, early in Ms. Thorme's**
20 **questioning she asked you why the office of**
21 **enforcement sometimes doesn't just accept initial**
22 **estimates that are reported to the regional boards**
23 **from dischargers. Do you recall that?**
24 A. Yes.
25 **Q. Okay. Are you aware that the initial**

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1 **estimate made to the regional board in this case**
2 **was approximately two to three million gallons**
3 **made by Mr. Appleton the former chief plant**
4 **operator?**
5 A. Yes, I am.
6 **Q. Is that size of a spill enough to**
7 **trigger investigation by the office of**
8 **enforcement?**
9 A. Yes.
10 **Q. And the first entry entered in to CIWQS**
11 **by the district, was that substantially lower?**
12 A. Yes, it was.
13 **Q. And is the disparity between the amount**
14 **initially entered by the district and the amount**
15 **reported by Mr. Appleton, is the disparity between**
16 **those two figures, is that in and of itself enough**
17 **to trigger an investigation by the office of**
18 **enforcement?**
19 A. Yes, it is.
20 **Q. The Oceano discharges were caused by**
21 **the overflow on December 19th and the district**
22 **influent pump failure, correct?**
23 A. Yes.
24 **Q. Isn't this a violation of the**
25 **district's MPDS permit which only allows end of**

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1 **pipe discharges?**
2 A. Yes, it is.
3 **Q. To the extent that you've met with**
4 **homeowners in the Oceano area and provided them**
5 **with public documentation, has it always been your**
6 **goal to provide them with accurate information?**
7 A. Yes, it is.
8 **Q. And encourage them to attend today and**
9 **provide the board with their statements regardless**
10 **of whether they were in support of the prosecution**
11 **team or the district?**
12 A. That's correct.
13 MS. MACEDO: Nothing further.
14 MR. YOUNG: Re-cross?
15
16 RE-CROSS EXAMINATION
17 BY MS. THORME:
18 **Q. I just have one question. If you could**
19 **bring up Exhibit 86 at page -- just do the first**
20 **page first so they can see what it is. So this is**
21 **administrative civil liability case against**
22 **eastern municipal water district. Did you work on**
23 **this matter?**
24 A. No, I did not.
25 **Q. Okay. So this was a 2011 sewer spill**

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1 **case. If you could turn to the next page, 86-2,**
2 **and pull up paragraph nine for me, please. So is**
3 **it unusual for the gallonage to change in a sewer**
4 **spill case? In this case it says that they had**
5 **originally estimated 2.39 million but additional**
6 **information was provided justifying a reduction to**
7 **1.6 million. So my question is, is that unusual**
8 **for the gallonage amount to be changed based on**
9 **new information?**
10 A. I don't know.
11 MS. THORME: Okay. Thank you.
12 MR. YOUNG: Are we finished with this
13 witness?
14 MS. MACEDO: Yes. You want board
15 member questions?
16 MR. YOUNG: Let's start at this end.
17 Mr. Jeffries.
18 MR. JEFFRIES: No questions.
19 MR. YOUNG: Mr. Harris?
20 MR. HARRIS: One question, Mr. Fischer,
21 and it goes back to I think the discussion
22 regarding the backup from the plant through the
23 trunk line and ultimately into the other
24 municipality's collection system.
25 MR. FISCHER: Yes.

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<p>1 MR. HARRIS: I was just wondering are 2 there -- I think the district was trying to draw a 3 line about whether or not they would be 4 responsible for that backup. Are there any cases 5 recorded currently in CIWQS or any prosecuted that 6 would be similar where a district's trunk lines 7 backup into someone else's collection system 8 having a spill and then that primary collector or 9 treatment plant itself was responsible? 10 MR. FISCHER: I can't speak for the 11 enforcement action but certainly for reporting 12 that has been done that way, yes. I'm familiar 13 with cases like that. 14 MR. HARRIS: Thank you. 15 MR. YOUNG: Dr. Wolff? 16 MR. WOLFF: Thank you. To your 17 knowledge someone with a mechanical engineering 18 background can operate a water treatment plant 19 with the proper licensing? 20 MR. FISCHER: I don't know. I don't 21 remember the requirements for that. 22 MR. WOLFF: Thank you. 23 MR. YOUNG: Mr. Jordan? 24 MR. JORDON: No. 25 MR. YOUNG: Mr. Johnston?</p> <p style="text-align: right;">Page 178</p>	<p>1 but what about as to any of the hearsay 2 exceptions? 3 MS. MACEDO: Well, the witness appeared 4 and was able to be cross-examined, and was 5 cross-examined. 6 MR. YOUNG: Okay. On his testimony but 7 not as everything in those documents. So I'm just 8 wondering what we wanted to do was make sure 9 that -- if you want the documents to come in or 10 for all purposes -- 11 MS. MACEDO: Do you want me to go 12 through documents one by one? 13 MR. YOUNG: No, I think you need to ask 14 him, you know, whether if he deals with the 15 business records exceptions, that's what I'm 16 thinking needs to be done. 17 MS. THORME: Yeah, there needs to be 18 more foundation laid for hearsay that just saying 19 that he prepared and put these documents together. 20 MR. YOUNG: For the hearsay 21 exception. 22 MS. THORME: And they need to be 23 authenticated. 24 MR. YOUNG: The documents are coming in 25 as hearsay.</p> <p style="text-align: right;">Page 180</p>
<p>1 MR. JOHNSTON: No. 2 MR. YOUNG: Okay. Thank you. We'll 3 let this witness go. 4 MS. MACEDO: I have one question if you 5 don't mind. I believe the evidentiary objections 6 that were submitted last week, Exhibit A came in 7 wherein Mr. Fischer provided a declaration, if you 8 could switch to D. So I just want to confirm 9 that, Mr. Fischer, you assisted with the 10 preparation of the materials submitted with both 11 the prosecution team's case in chief and rebuttal 12 and that your signature appears on the top of this 13 page? 14 MR. FISCHER: Yes, it does. 15 MS. MACEDO: Okay. And we prepared 16 what was I believe exhibits 1 through 24 and 99 17 through 113. 18 MR. FISCHER: Yes. 19 MS. MACEDO: Thank you. 20 MR. FISCHER: Thank you. 21 MR. YOUNG: And just so I follow the 22 point that Ms. Macedo -- 23 MS. MACEDO: That's your foundational 24 requirement. There you go. 25 MR. YOUNG: Okay. I understand that,</p> <p style="text-align: right;">Page 179</p>	<p>1 MS. MACEDO: Right. I'm happy to go 2 through every document. 3 MR. YOUNG: Well, if you can -- I think 4 you're going to need to if you want to get them 5 all in, then you can put them up on the screen and 6 go through the steps. 7 MS. MACEDO: I'm happy to do business 8 record exception and hit every document. I guess 9 I'd prefer to do that at the end, just to get 10 through the main testimony. Do you have a 11 preference? 12 MR. YOUNG: I don't have a preference 13 one way or the other with that. 14 MS. MACEDO: Okay. Is that all right? 15 MR. YOUNG: That's all right. 16 MS. MACEDO: Okay. 17 MR. YOUNG: Next witness. 18 MS. MACEDO: Thank you. 19 MS. DISIMONE: Hi, I'm Katie DiSimone 20 staff engineer here at the Central Coast Water 21 Board. I'm also -- I've been here for a number of 22 years, close to ten total, but I took a break in 23 between and went to work for the City of 24 San Luis Obispo as a water project manager working 25 on improvements of its wastewater treatment plant.</p> <p style="text-align: right;">Page 181</p>

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<p>1 So there's a little background on me. This is the 2 first time many of you have seen me here, but I've 3 worked her for a while, so thank you for 4 entertaining me here today. 5 I am doing my presentation of the 6 penalty calculations presented here today. I'm 7 taking a bit of a departure than the typical 8 PowerPoint presentation efforts and instead I'm 9 going to use an Excel spreadsheet so we can walk 10 through exactly how the penalty was calculated 11 that you're considering today. 12 So while our region has issued many 13 ACLs over the past years the proposed penalty 14 presented for your consideration today is based on 15 the relatively recent enforcement policy penalty 16 calculation methodology adopted in May 2010. 17 The 2010 policy associated methodology 18 were created to ensure a consistent, fair method 19 of calculating penalties across various regions 20 for various types of violations, and in 21 consideration of water code section 13385(b). 22 This discussion of the methodology 23 we'll walk through in this spreadsheet will 24 probably sound familiar and ring some bells for 25 you. As section manager Harvey Packard has</p> <p style="text-align: right;">Page 182</p>	<p>1 what has already been put into evidence. 2 MS. JAHR: Is that acceptable to you? 3 MS. THORME: Yes. 4 MR. YOUNG: Let us know what exhibit 5 number you're looking at and what page. 6 MS. MACEDO: Well, we're hoping you'd 7 follow along on the screen. That's the best we 8 can do. 9 MR. YOUNG: Okay. This is a part of 10 the technical report? 11 MS. MACEDO: It's in the technical 12 report which is Exhibit 1 to the prosecution 13 team's submission on July 27th. 14 MR. YOUNG: Okay. 15 MS. DISIMONE: Bear with me one second 16 while I make that slightly larger. So with that, 17 the penalty policy calculation methodology has ten 18 steps to determine the final liability including 19 consideration of type of discharge, impact to 20 beneficial use, culpability, ability to pay and 21 various other factors. 22 The prosecution team and the district 23 agree on a few of the steps but definitely not all 24 of the steps or the factors that go into the 25 determination as part of this methodology. So</p> <p style="text-align: right;">Page 184</p>
<p>1 previously briefed the board on this methodology 2 earlier this year. 3 MS. THORME: And Mr. Chairman, if I 4 could interject, if she's going to put things up 5 on the screen we need to print them as she talks 6 about them so they can go in the record. Because 7 if it's just going by on the screen it won't get 8 into the record. 9 MR. YOUNG: I take it we don't have 10 paper copies of this already generated? 11 MS. MACEDO: No, it's going to be 12 created as she talks. And I'm happy to print it 13 as soon as it's a completed document and then 14 provide it for everyone, but it's being created so 15 people just don't look at it and not listen to her 16 as she presents. 17 MS. JAHR: The final product, however, 18 is already in its attached in the technical 19 report, right? 20 MS. MACEDO: That's right. 21 MS. JAHR: To the minus 63-? 22 MS. MACEDO: Minus 63-, that's right. 23 MS. THORME: My understanding she was 24 going to move things around potentially. 25 MS. DISIMONE: It will look the same as</p> <p style="text-align: right;">Page 183</p>	<p>1 today I'll walk through the steps, the factors, 2 where we had agreement and where we have 3 disagreement. As a general -- I'm going to ask a 4 question. Is this large enough for the board 5 members to see? 6 MR. YOUNG: We can see. 7 MS. DISIMONE: And the district to be 8 able to see on the board clearly. 9 MR. YOUNG: Yes. 10 MS. THORME: Yes. Okay. 11 MS. DISIMONE: So with that you can 12 tell there's ten factors -- ten steps, excuse me. 13 And what I'm going to do is scroll up to the top, 14 start with step on. 15 Step one is called a potential harm 16 factor. And it's an evaluation of potential harm 17 to beneficial uses considering that harm that may 18 result from exposure to the discharge. Within 19 that step one we're going to actually have 20 three -- four factors, if you will, up here in the 21 top right-hand corner in green of the spreadsheet. 22 The four factors are potential harm for 23 discharge violations, characteristics of the 24 discharge, susceptibility of cleanup or abatement, 25 and deviations from requirement.</p> <p style="text-align: right;">Page 185</p>

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<p>1 So let's walk through the first factor.</p> <p>2 Potential harm for discharge violations. As we</p> <p>3 look at this there is a pull-down scale that comes</p> <p>4 with this indicating that there's an availability</p> <p>5 of a score between zero and five, where zero is</p> <p>6 considered negligible and five is considered</p> <p>7 major, and that describes the threat to beneficial</p> <p>8 uses; in other words, negligible threat or major</p> <p>9 threat.</p> <p>10 Of note here, if you refer back to the</p> <p>11 2010 enforcement policy, I do believe all the</p> <p>12 board members have that policy for consideration</p> <p>13 during their weighing of the evidence presented</p> <p>14 here. Scores zero through three do not include</p> <p>15 restrictions on beneficial use as a result of</p> <p>16 discharge, whereas scores four and five are both</p> <p>17 explicitly stated that they acknowledge the</p> <p>18 discharge caused restrictions on beneficial uses.</p> <p>19 The difference being between scores</p> <p>20 four and five is with regards to the duration of</p> <p>21 the restrictions on beneficial use. A score of</p> <p>22 four would be less than five days and a score of</p> <p>23 five would be greater than five days.</p> <p>24 The prosecution team selected a score</p> <p>25 of five, a major threat to beneficial uses for</p> <p style="text-align: right;">Page 186</p>	<p>1 and select five.</p> <p>2 The district has proposed or has argued</p> <p>3 in their briefs and evidence that the score of</p> <p>4 two, in other words, below moderate, is</p> <p>5 appropriate. You can refer to the enforcement</p> <p>6 policy for a description of below moderate, but</p> <p>7 the description includes where harm is minor. A</p> <p>8 score this low fails to acknowledge the county</p> <p>9 imposed beach restrictions on nearly one dozen</p> <p>10 confirmed residential sewer spills and the</p> <p>11 reported acute potentially chronic illnesses</p> <p>12 reported after exposure to the spill.</p> <p>13 Looking at the next factor which</p> <p>14 involves the physical, chemical, biological</p> <p>15 characteristics of the discharge; in other words,</p> <p>16 what exactly was spilled, what are those</p> <p>17 characteristics. In this case we're talking about</p> <p>18 untreated sewage combined with storm water flows.</p> <p>19 So in this particular drop-down the score ranges</p> <p>20 from zero to four, similar to the other, zero</p> <p>21 being negligible risk, four going all the way up</p> <p>22 to a significant risk.</p> <p>23 The prosecution team has used a score</p> <p>24 of three, above moderate, to describe discharge</p> <p>25 material. This is consistent with other wet</p> <p style="text-align: right;">Page 188</p>
<p>1 this particular action and violation. This is</p> <p>2 acknowledging that sewage flowed into creeks --</p> <p>3 untreated sewage flowed into creeks, lagoons,</p> <p>4 Pacific Ocean. Sewage flowed into private</p> <p>5 residences directly exposing residents to</p> <p>6 wastewater. Reports of illnesses have been</p> <p>7 presented in the prosecution team's evidence, both</p> <p>8 acute and chronic exposure effects.</p> <p>9 Beneficial uses of the water that were</p> <p>10 impacted by the spill included potential source of</p> <p>11 drinking water, aquatic habitat, recreational uses</p> <p>12 both direction and nondirect or contact and</p> <p>13 noncontact. But additionally the beach was closed</p> <p>14 for multiple days as a result of the spill. While</p> <p>15 the prosecution team recognizes that beach</p> <p>16 conditions were also affected by high surf and</p> <p>17 flooding at the same time as the spill occurred, a</p> <p>18 sewage spill of this magnitude without the surf</p> <p>19 and flooding would have still resulted in beach</p> <p>20 restrictions and closures.</p> <p>21 In this particular case those beach</p> <p>22 restrictions were in place longer than five days.</p> <p>23 The prosecution team believes that that evidence</p> <p>24 supports the selection of the threat score of</p> <p>25 five. So I'm going to fill that in here for you</p> <p style="text-align: right;">Page 187</p>	<p>1 weather SSOs that were researched by the</p> <p>2 prosecution team. And the district, however,</p> <p>3 proposes to use two which will be a moderate</p> <p>4 description. We don't feel this is appropriate</p> <p>5 and a failure to acknowledge the dangers inherent</p> <p>6 in untreated sewage disclosures. Pathogens,</p> <p>7 bacteria, viruses, metal, excessive nutrients and</p> <p>8 organic floating, floating materials, personal</p> <p>9 hygiene products, any number of things that people</p> <p>10 put into their sewer system, both industrially,</p> <p>11 personally, you just don't know.</p> <p>12 So I would like to note that the</p> <p>13 enforcement policy is written and the scores given</p> <p>14 encompasses a wide range of types of discharges or</p> <p>15 spills that could be contained. So the scale of</p> <p>16 zero to four can even include things like</p> <p>17 chlorinated drinking water all the way up to</p> <p>18 industrial waste. A score of three, again, just</p> <p>19 to reiterate, is consistent with other ACLs within</p> <p>20 the state for wet weather sewage spills.</p> <p>21 Factor three is fairly straightforward</p> <p>22 and is called acceptability of cleanup or</p> <p>23 abatement. This one we have an agreement on.</p> <p>24 Both the district and prosecution team agreed on</p> <p>25 less than 50 percent of the spilled materials can</p> <p style="text-align: right;">Page 189</p>

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<p>1 be recovered for a cleanup or abatement action and 2 therefore we choose that. And that actually 3 assigned a score of one. It's not clear on the 4 spreadsheet, but that particular assignment 5 generates a score of one. If you were to make a 6 determination that greater than 50 percent could 7 have been cleaned up the score would be zero. 8 I'm going to now take those three 9 factors that I've just described and add them 10 together, five, three, one is nine, but I can 11 still do that math. So we're going to take that 12 nine and go to table one of the 2010 enforcement 13 policy which I have recreated here just for 14 demonstration purposes. This is the same table as 15 the one that's presented in the 2010 enforcement 16 policy. 17 The potential harm scores, the sum that 18 I just talked about of those three factors in 19 which case ours is nine, I would get out a laser. 20 It's nine right there. And in order to read the 21 final thing we need to for step one we're going to 22 have to make a determination that is on the Y axis 23 for deviation from requirement. 24 So in this particular case we're going 25 to have to decide whether the deviation from</p> <p style="text-align: right;">Page 190</p>	<p>1 Furthermore, it would be difficult to 2 argue that the discharger had an intent to comply 3 when there were no electrical weaknesses within 4 the wastewater treatment plant wiring and grading, 5 valve operations that were unaddressed, especially 6 with regards to the electrical as was seen in 7 2004, major budget items, making decisions to save 8 money and therefore jeopardizing the ability to 9 comply with the requirement in a reasonable manner 10 does not meet the minor definition. 11 Using moderate as our selected 12 deviation we can come back to the main table 13 select moderate from the pull-down menu, and then 14 use this newfangled button that says determine 15 harm and per gallon per day factors for violation 16 one. When I press that button magic happens and 17 step one has the total score of nine that we 18 discussed, and it also populates the two green 19 squares within step two's per gallon factor and 20 per day factor, with a per gallon factor per day 21 of .5 each. 22 So for clarification, if you were to 23 compare with what the district is proposing you 24 would instead go to table one and use a total 25 score of potential harm of five and choose minor,</p> <p style="text-align: right;">Page 192</p>
<p>1 requirement fits minor, moderate or major as the 2 correct description. What does the deviation from 3 requirement reflect? It's the extent to which the 4 violation deviates from the specific requirement; 5 in other words, how far away from compliance with 6 the requirement are we. And in this case we're 7 talking about the deviation from the prohibition 8 of spilling or discharging of untreated sewage at 9 a collection system. 10 So minor would be described as the 11 general intent to comply, the effectiveness of the 12 requirement generally remains intact. Major would 13 mean the requirement was rendered ineffective. 14 The prosecution team fits somewhere in between the 15 two descriptions. Moderate is an appropriate 16 description, the requirement is partially 17 achieved. So while not all the sewage from that 18 day spilled and a collection system didn't 19 completely fail, they were effective partially and 20 therefore partial achievement was required. 21 We do not feel that it meets minor 22 intent. This is a fairly major gallon spill, I 23 think it would be inappropriate to term this a 24 minor spill where effectiveness generally was 25 intact.</p> <p style="text-align: right;">Page 191</p>	<p>1 moderate or major. At this point I can't give you 2 a clear answer what the per gallon and per day 3 factor would be that the district has proposed 4 because they've simultaneously argued it's 5 somewhere between minor or moderate. And it's 6 unclear to me from the evidence that's been 7 presented, which would be the argument they say 8 applies. So with that we have a couple lines of 9 our table filled, we're done with step one. Let's 10 move on to step two. 11 Step two is the assessment for the 12 discharge violation. Under water code section 13 13385 where deemed appropriate such as for large 14 scale spills both per gallon and per day 15 assessments may be considered. We feel this is 16 appropriate here and have included such in our 17 penalty calculations. Under the water code 18 section 13385(c) the maximum per gallon penalty 19 allowed under the water code is \$10 per gallon; 20 however, in consideration of large spills the 21 water board can consider a maximum of \$2 per 22 gallon under their discretion. The prosecution 23 team is using that recommendation and using \$2 per 24 gallon as the adjusted max per gallon. 25 And with regards to the statutory</p> <p style="text-align: right;">Page 193</p>

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<p>1 maximum per day on a per day factor, according to 2 section 13 again, according to water code section 3 13385(c) it's \$10,000 per day. I'll fill that in. 4 And now we have a couple of remaining factors to 5 fill in, the gallons and the days. I'll start 6 with the easier discussion item. The spill 7 occurred on December 19th and 20th, 2010, so I'm 8 going to put two for the number of days. And the 9 gallons -- the per gallon penalty amount applied 10 after the first thousand gallons spilled, so in 11 this case the prosecution team has estimated the 12 total gallons spilled as 1,139,825 gallons. And 13 I'm going to subtract off a thousand gallons to be 14 consistent with the regulation policy, so it's 15 1,138,825 gallons. 16 So filling in step two with those last 17 bits of information has completed step two, and we 18 can move on to step three, which would be per day 19 assessments for nondischarged violation. 20 Previously in the original consideration that you 21 had in front of you at the start of the day we did 22 include the reporting violations, or I should say 23 non-reporting violations. And as we've just 24 testified to we're going to take those off the 25 table due to typographical error, so normally this</p> <p style="text-align: right;">Page 194</p>	<p>1 amount. 2 The first factor we're going to look at 3 under step four is culpability, and culpability in 4 this case, higher liabilities should result from 5 intentional or negligent violations and for 6 accidental or non-negligent violations. The test 7 for this under the policy guide is what a 8 reasonable and prudent person would have done or 9 not done under similar circumstances. 10 In this particular case we're not just 11 talking about an operator working at the 12 wastewater treatment plant, but rather the 13 district as a whole and how their actions play a 14 part in the reasonable and prudent test. 15 So in evaluating the adjustment 16 multiplier given in the policy is anywhere between 17 .5 and 1.5. The prosecution team in this case has 18 selected a 1.1. So again, for clarity, the 19 maximum we could have assessed was 1.5, we've 20 chosen just over a neutral factor. 21 We do feel that the district has 22 culpability in their actions and that it was not 23 reasonable and prudent to defer the major budget 24 items for electrical repairs since 2004, that the 25 standard operating procedures were deficient in</p> <p style="text-align: right;">Page 196</p>
<p>1 would be filled out, I'm going to leave it blank. 2 I guess it's maybe a question of consistency. May 3 I leave this blank? For the purposes of my 4 demonstration can we agree to leave it off? 5 MR. YOUNG: Sure. 6 MS. JAHR: Yes. 7 MS. DISIMONE: Okay. I will do that. 8 You will all be pleased to know that will save 9 about 15 minutes. And since these are now zeros 10 and it generates an initial -- the spreadsheet 11 generates an initial amount of the APL in the 12 total of \$1,148,825. 13 We now move on to step four which is 14 called additional factors. These are adjustment 15 factors that the board can consider, and 16 essentially they describe the violator's conduct 17 and can make adjustments up or down to the final 18 ACL amount based on the discharger's conduct, or 19 the violator's conduct. 20 The thing to remember with these 21 remaining factors as we discuss them is that these 22 are sliding scales. Anything great -- a factor 23 greater than 1.0 will result in an increase to the 24 final ACL amount. Any factor less than one will 25 be a multiplier and will decrease the final ACL</p> <p style="text-align: right;">Page 195</p>	<p>1 that to close all 12-inch valves and then 2 subsequently that 12-inch valve created problems 3 during the spill. Standard operating procedures 4 were revised after the spill as a result. 5 It's a flood prone area, there's known 6 grade issues that weren't addressed sufficiently 7 to prevent some of the intrusion of water, so 8 while there was a flood and we are acknowledging 9 that that does contribute to the problems 10 experienced, it does not release the district from 11 the problems they encountered with regards to 12 electrical repairs which could have in large part 13 prevented the problems and the eventual failure. 14 With that I'm going to move on to 15 cleanup and cooperation. This is describing the 16 extent to which the discharger voluntarily 17 cooperated in returning to compliance and 18 correcting environmental damage. This factor can 19 go, according to policy, and we're using .75 to 20 1.5. In this particular case the prosecution team 21 is recommending a one, a neutral. We don't feel 22 they went to any superior or less than superior. 23 A one is essentially an average rating. We feel 24 they behaved according to what regulations 25 dictated, and we're not discounting for any issues</p> <p style="text-align: right;">Page 197</p>

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<p>1 with their response in this case.</p> <p>2 The third factor is listed as a history</p> <p>3 of violations. It's important to note that you</p> <p>4 cannot go lower than one, a 1.0 factor on this,</p> <p>5 but if there was a history of repeated violations</p> <p>6 a minimum multiplier would be 1.1. In this</p> <p>7 particular case we're not finding that there is a</p> <p>8 history of repeated violations so we're going to</p> <p>9 consider increasing the amount but we're going to</p> <p>10 leave that also at a factor of one.</p> <p>11 I think I'd like to just touch on one</p> <p>12 thing. It wasn't in my notes but I would like to</p> <p>13 address it. I'm very sympathetic to the public</p> <p>14 input that I heard with regards to the flood</p> <p>15 causing the problems here. The electrical</p> <p>16 problems and the way that these issues happened</p> <p>17 and the pumps failed and the shorts that were</p> <p>18 experienced didn't require a flood of this</p> <p>19 magnitude. The district had problems prior to</p> <p>20 this flood with their electrical system. That's</p> <p>21 clear in the language that was brought before you</p> <p>22 in evidence describing the major budget items for</p> <p>23 electrical repairs, that there were need to</p> <p>24 replace with waterproof wiring, several instances</p> <p>25 of failure causing loss of power previously, and</p> <p style="text-align: right;">Page 198</p>	<p>1 evidence that they've examined the district's</p> <p>2 financial records and concluded that the district</p> <p>3 has the ability to pay. With that it now switches</p> <p>4 to the district, and the district must provide an</p> <p>5 affirmative defense; in other words, clearly</p> <p>6 demonstrate an inability to pay in order for the</p> <p>7 board to adjust the recommended penalty under step</p> <p>8 six.</p> <p>9 With regards to ability to pay -- take</p> <p>10 a moment here. The ability to pay today has</p> <p>11 focused thus far on issues with regards to a</p> <p>12 \$5 million, roughly, cash reserves or liquid</p> <p>13 accounts and whether or not there could be a</p> <p>14 theory that that money could be saved for -- that</p> <p>15 that money could be saved for -- whether that</p> <p>16 money could have been saved for larger projects,</p> <p>17 future projects, but the district was anticipating</p> <p>18 that the wastewater treatment plant or otherwise.</p> <p>19 And I heard the district say that the 1.4 million</p> <p>20 is beyond their ability to pay.</p> <p>21 I find this curious because in my job</p> <p>22 at the water board as dealing with the permit</p> <p>23 compliance for the wastewater treatment plant for</p> <p>24 the district their wastewater treatment plant</p> <p>25 permit MPDS permit No. R32009-0046 fax sheet F,</p> <p style="text-align: right;">Page 200</p>
<p>1 that seals had not been installed, they had</p> <p>2 deteriorated wiring.</p> <p>3 It wasn't a flood that was needed, it</p> <p>4 was merely water in contact with wires which could</p> <p>5 result from rainfall events, wash-down water,</p> <p>6 delivery trucks, dust control water. This could</p> <p>7 have been from a number of different sources, not</p> <p>8 just a flood.</p> <p>9 So while I'm sympathetic the flood was</p> <p>10 a compounding issue with regards to complexity of</p> <p>11 what was experienced on that day by the district,</p> <p>12 it did not need to be a flood of that size to</p> <p>13 cause those problems. And that is at the heart of</p> <p>14 the prosecution team's presentation and</p> <p>15 considerations. And I think a 1.1 culpability</p> <p>16 score is quite conservative given those factors.</p> <p>17 Moving on to step five, that is simply</p> <p>18 a new sum total after factoring in step four</p> <p>19 multipliers. And so with the 1.1 culpability</p> <p>20 factor we did increase by 10 percent the base</p> <p>21 liability amount to \$1,263,707.50.</p> <p>22 Step six, we've heard a lot about this</p> <p>23 step earlier, or we started to, and that was the</p> <p>24 ability to pay and continue in business. So at</p> <p>25 the start the prosecution team has presented</p> <p style="text-align: right;">Page 199</p>	<p>1 planned changes. I'd like to describe this. It</p> <p>2 says, "Addition of a second secondary clarifier</p> <p>3 and an aeration tank" -- I left off the dimensions</p> <p>4 from the description for ease -- "is planned</p> <p>5 during the time frame of this permit. These</p> <p>6 additions to the secondary treatment process will</p> <p>7 improve the facility's ability to handle</p> <p>8 anticipated increased strength BOD and TSS of</p> <p>9 wastewater due to water conservation efforts of</p> <p>10 the member agencies. These changes will also</p> <p>11 provide redundancy in the secondary equivalent</p> <p>12 biological treatment process in the event of an</p> <p>13 emergency shutdown, mechanical failure or routine</p> <p>14 maintenance."</p> <p>15 MS. THORME: Can we get a page number</p> <p>16 of that?</p> <p>17 MS. DISIMONE: That's F-6.</p> <p>18 MS. THORME: Is that in --</p> <p>19 MS. DISIMONE: In the order.</p> <p>20 MS. THORME: In the order. What</p> <p>21 exhibit was that?</p> <p>22 MS. JAHR: I believe it's Exhibit 28.</p> <p>23 MS. DISIMONE: It's order R32009. I</p> <p>24 don't have the evidence list in front of me.</p> <p>25 MS. JAHR: 0046, Exhibit 28.</p> <p style="text-align: right;">Page 201</p>

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<p>1 MS. DISIMONE: Thank you. And again, 2 that was Page F-6. 3 The plant does needs these 4 improvements. These are -- this was highlighted 5 in a recent inspection that I performed at the 6 plant, I'd say about roughly four months ago. 7 Currently the secondary treatment process has no 8 redundancy, it's a single fixed film reactor. And 9 this need has been identified by the district many 10 years past, and I'll pull from also Exhibit 6, 11 Page 2765 is the description of a major budget 12 item for fiscal budget year 2010 to 2011 is what I 13 have on the screen currently. Scroll up to the 14 top. This talks about long-range planned 15 expansion. The total project budget is 16 \$8,500,000. This is actually done from previous 17 budget years but had it at \$12 million. And those 18 facts and figures can now be found within that 19 same exhibit, just on previous pages. 20 As it says in this exhibit and on this 21 page the district -- in this paragraph here, I'm 22 sorry. I can enlarge it. It says here, also as 23 part of the SRF process, in other words, the state 24 revolving fund process, staff, meaning the 25 district, is also working on a rate study to</p> <p style="text-align: right;">Page 202</p>	<p>1 What I don't read on here, getting to 2 previous comments I've heard during today, is that 3 the district isn't mentioning a separate fund set 4 aside in pre-planning of this. What I see is we 5 think that the rates currently might be adequate 6 to qualify for an SRF loan. I worked previously 7 for a city in developing SRF loan applications and 8 budgeting for major improvement projects at a 9 wastewater treatment plant, and if I had had 10 \$5 million planned for this major budget item I 11 believe I would have mentioned it. 12 So going back to ability to pay. We're 13 entering a factor of one. We don't feel that this 14 needs to be decreased, we believe that the 15 district has the ability to pay. We do not 16 believe that the district has met the affirmative 17 defense to show an inability to pay. 18 Step seven is a mouthful that says 19 other factors as justice may require staff costs. 20 So if the water board believes that the amount 21 determined using the above factors is 22 inappropriate the amount may be adjusted under the 23 provision for other factors as justice may 24 require, but only if express findings are made to 25 justify this. Staff costs are included within</p> <p style="text-align: right;">Page 204</p>
<p>1 determine if current rates are sufficient to 2 qualify for the loan, getting information from the 3 member agencies has proved cumbersome, and it goes 4 on to say that they're working on a rate study. 5 As a staff member of the water board 6 interested in looking at compliance with the 7 permit, and in regards to this particular penalty 8 and why I feel it's important as a message to the 9 district about the importance and urgency of 10 needed projects, not just electrical projects but 11 also things likely redundancy within your 12 treatment processes, especially for secondary 13 treatment. According to the permit this work was 14 going to be completed during that permit -- this 15 current permit cycle. This permit expires in two 16 years. 17 If the rate study isn't competed or out 18 according to this document, I don't have final 19 engineering drawings, I don't have a project out 20 for bid, I don't have construction started, and I 21 only have two years of this permit left. This to 22 me is failing to adjust the urgency of previously 23 identified needs. The district needs to hear that 24 message, and I think the ACL is a method of doing 25 that.</p> <p style="text-align: right;">Page 203</p>	<p>1 this amount for \$75,000 as -- I'm sorry, for 2 \$75,000, and so those are included in there. 3 MR. YOUNG: Which is 25,000 more than 4 what's in our exhibit, right? And that's because 5 of -- 6 MS. MACEDO: Yes. At the time of the 7 complaint staff costs were 50,000, at the time of 8 the initial submission of evidentiary brief they 9 were 63-, and at the time of the rebuttal brief 10 they were 75-. And we estimated that we would 11 accept 75- unless you the board wanted specific 12 information and we would calculate an exact 13 amount, but we would be willing to accept a 14 \$75,000 award. 15 MR. YOUNG: Okay. 16 MS. DISIMONE: And so moving on to step 17 eight, economic benefit has also been discussed 18 previously. We heard testimony from Dr. Gerry 19 Horner that the economic benefit district derived 20 from delaying major budget items for electrical 21 repairs at the plant was \$177,209. Wonderfully 22 entering that number in gets us almost to the end 23 of our presentation of the ten steps. 24 Step nine being the minimum and maximum 25 liability amounts. These are straightforward from</p> <p style="text-align: right;">Page 205</p>

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<p>1 the enforcement policy and water code. The 2 minimum ACL has to be 10 percent over the economic 3 benefit derived, so in this case the formula 4 entered here is 10 percent greater than the 5 \$177,209 yielding a minimum liability amount of 6 \$194,930. So the maximum liability amount, the 7 next part of step nine, and that is calculated as 8 \$10 per gallon exceeding the first one thousand 9 gallon spill plus \$10,000 per day. So in this 10 case it is as if the per day factor of two days -- 11 or excuse me, it's as if the per day factor and 12 the per gallon factor were not applied and instead 13 multiplied by the maximum statutory limit for each 14 of those, \$10 per gallon and \$10,000 per day. 15 Step ten is simply a final tally of 16 what our final liability amount would be after the 17 multipliers and factors considered and described 18 in my previous part of the presentation, and the 19 total final liability amount in step 10 would be 20 \$1,338,707.50. For clarification and just to 21 reiterate, that amount takes out the 63,000 that 22 was previously on the table at the beginning of 23 the day for consideration. So by showing a live 24 demonstration of this, this would be the new 25 amount for consideration based on the prosecution</p> <p style="text-align: right;">Page 206</p>	<p>1 sense this urgency. With two years left in their 2 permit and the expectation that that work was 3 going to be done before then, I fear that we're on 4 a course to not meet that. 5 The district is expected -- the recent 6 inspections also verified that there's an unlined 7 sludge drying bed and other things which were also 8 part of their major budget improvement. The 9 district has work to do and I hope they feel the 10 urgency to do that. 11 MR. WOLFF: Can you repeat the last 12 sentence, please? I didn't understand that. 13 MS. DISIMONE: Sure. I would hope 14 that -- the district has a lot of remaining work 15 to be done with the plant expansion to include a 16 redundancy within their secondary treatment 17 process as well as other major budget items, such 18 as unlined sludge drying beds which were a part of 19 the discussion during my recent inspection there. 20 And I hope that the district is able to 21 feel the sense of urgency to perform that work 22 given that their two years -- they only have two 23 years left in their current permit cycle and that 24 redundancy within a secondary treatment was 25 expected before the end of this permit cycle.</p> <p style="text-align: right;">Page 208</p>
<p>1 team's recommendation, that includes 2 acknowledgement of removing that 63,000 3 non-discharge violation for the failure to 4 report. 5 MS. THORME: So can we have this 6 printed and marked as Exhibit 116 then? 7 MR. YOUNG: Sure. 8 MS. DISIMONE: Absolutely. 9 MS. MACEDO: Yes. 10 MS. DISIMONE: I can do that. I just 11 will probably coordinate getting it off the laptop 12 and onto the printer when I'm done with being 13 crossed. 14 In summary, the penalty presented here 15 today consistent with the 2010 water quality 16 enforcement policy, water code represents a 17 conservative and fair assessment of the factors 18 affecting the final penalty amount and the 19 conditions of the spill. We are hopeful that the 20 penalties will emphasize the importance and 21 urgency of promptly performing maintenance and 22 identifying necessary improvements to meet permit 23 conditions. I talked about the challenges the 24 district is facing in the near future with regards 25 to plant expansion, and it's important that they</p> <p style="text-align: right;">Page 207</p>	<p>1 The district may not appear to 2 recognize that urgency and I would not like to be 3 back in front of you on an upset of failure to 4 comply because a secondary treatment system had a 5 problem and they failed to recognize that urgency. 6 So with that said I am open to questions. 7 MS. MACEDO: I'll save mine for 8 redirect. 9 MR. YOUNG: Okay. Cross. 10 11 CROSS-EXAMINATION 12 BY MS. THORME: 13 Q. Ms. DiSimone, can I have you stand at 14 the podium so I can actually see you? 15 A. Yes. 16 Q. So you were not the district's water 17 board contact at the time of the 2010 spill; is 18 that correct? 19 A. No. 20 Q. Was it Matt Keeling? 21 A. Yes. Okay. Wait. Was that correct? 22 Yes, it was correct. 23 Q. Was Matt Keeling the person who was 24 their contact at that time? 25 A. Yes, I believe so.</p> <p style="text-align: right;">Page 209</p>

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1 **Q. Okay. And did you have any involvement**
2 **in drafting the prosecution team's Exhibit 1**
3 **technical report?**
4 A. No, ma'am.
5 **Q. Okay. And did you review any of the**
6 **staff people's inspection reports prior to the**
7 **2010 event?**
8 A. Can you repeat that?
9 **Q. Yes. Did you review any of the**
10 **regional board's inspection reports of the plant,**
11 **prior -- that were in time prior to the 2010**
12 **event?**
13 A. I'm a little hesitant what time frame
14 you're asking me. So have I ever reviewed any of
15 the inspection reports from --
16 **Q. So say there were inspections done**
17 **annually of the plant, is that about right? How**
18 **often is the plant inspected?**
19 A. I would defer to the record on that. I
20 am not the case worker since --
21 **Q. Okay. So my question is, assuming it's**
22 **inspected annually, did you go back when you were**
23 **preparing the penalty factors and look at the**
24 **inspection reports for 2008, 2009, 2010?**
25 A. Yes, I reviewed various parts of the

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1 record, including inspection reports.
2 **Q. Okay. And did any of those inspection**
3 **reports indicate that this 2010 spill was**
4 **likely?**
5 A. I don't recall that.
6 **Q. What is your understanding of**
7 **"upset"?**
8 A. In what context?
9 **Q. In the permit requirement context.**
10 A. In the permit context, an upset event,
11 as I believe you're describing, would be with
12 regards to an event which is related to the
13 discharge of violating technologically based
14 effluent limits.
15 **Q. Okay. And does the permit --**
16 **district's permit have specific provisions**
17 **allowing the defense of upset?**
18 A. Which permit would you --
19 **Q. The MPDS permit.**
20 A. Can you repeat the question?
21 **Q. Does that permit have specific**
22 **provisions allowing the defense of upset?**
23 A. Yes. Wastewater treatment plant permit
24 does.
25 **Q. Does it also have the defense of**

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1 **bypass?**
2 A. The wastewater treatment plant permit
3 does.
4 **Q. Okay. And isn't the prosecution team**
5 **alleging that the cause of the spill occurred at**
6 **the wastewater treatment plant?**
7 A. That is correct, that the influent pump
8 failure caused the backup in the collection
9 system.
10 **Q. And can you provide me of any examples**
11 **where the defense of either upset or bypass have**
12 **been allowed by this regional board?**
13 A. I cannot.
14 **Q. And do you know why the permit contains**
15 **those defenses?**
16 A. Because the MPDS allows that. MPDS
17 permit allows that.
18 **Q. Do the federal regulations not require**
19 **that permit have upset and bypass defenses that**
20 **include language that is copied from the**
21 **regulations into the permit?**
22 MS. MACEDO: Objection. Calls for a
23 legal conclusion.
24 You can answer if you know.
25 MS. DISIMONE: I don't see much

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1 difference between my answer and what you just
2 said.
3 BY MS. THORME:
4 **Q. Are you aware that the federal**
5 **regulations also included upset and bypass**
6 **defenses?**
7 A. Yes.
8 **Q. Okay. And do you think wastewater**
9 **treatment facilities can operate perfectly**
10 **100 percent of the time?**
11 A. No.
12 **Q. So you said that the district didn't**
13 **need a flood to cause the spill. If that's the**
14 **case, how come it never happened for 25 years?**
15 MS. MACEDO: Objection. Calls for
16 speculation.
17 You can answer.
18 MS. DISIMONE: I don't know the 25 year
19 history of what went on, what was recorded. I
20 don't believe everything that happens at a
21 wastewater treatment plant gets recorded.
22 BY MS. THORME:
23 **Q. So you're alleging there were spills**
24 **that weren't reported?**
25 A. That's not what I'm alleging.

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1 **Q. Okay. Can't machinery even if well**
2 **maintained have occasional times of malfunction?**
3 A. Sure.
4 **Q. What previous regulatory actions have**
5 **been taken against the district?**
6 A. I'd have to refer to the project
7 records. Off the top of my head I can't
8 specifically answer that.
9 **Q. Okay. So you're not aware of any**
10 **effluent violations and mandatory minimum**
11 **penalties?**
12 A. Yes, I am aware of effluent violations.
13 And with regards to the specifics of those, I'm
14 fairly -- I prefer to give a full, complete answer
15 without the project records. I don't want to
16 speculate.
17 **Q. Okay. And are you aware that from the**
18 **time 2000 when the mandatory minimum penalty**
19 **statute went into effect and now that the district**
20 **has only been penalized \$6,000 in mandatory**
21 **minimum penalties for effluent limit violations?**
22 A. What was the question?
23 **Q. Are you aware that since 2000 to now,**
24 **that the district has only been given mandatory**
25 **minimum penalties for \$6,000 worth of effluent**

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1 **violations?**
2 A. I would have to verify that.
3 **Q. All right. Can you pull up**
4 **Exhibit 95-2, please? If you could pull up the**
5 **yellow part. Are you aware of what this document**
6 **is?**
7 A. It looks like a query of CIWQS's
8 database, but I did not develop this, so I am not
9 entirely sure.
10 **Q. So if this was a CIWQS download, when**
11 **you were asking for all the discharges and all the**
12 **penalties and it's \$6,000, would you question**
13 **that?**
14 A. I didn't generate this, so I'm
15 uncomfortable verifying whether or not that
16 information is correct.
17 **Q. Okay. And can you pull up Exhibit 101**
18 **for me, please? So did the prosecution team**
19 **prepare this Exhibit 101?**
20 A. Yes.
21 **Q. Okay. And what did you do to prepare**
22 **this?**
23 A. I would defer to Matt, as he was the
24 primary generator of this exhibit.
25 **Q. Okay. So you stated that you had**

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1 **identified that the district has a need for doing**
2 **additional major budget item projects; is that**
3 **correct?**
4 A. Yes.
5 **Q. And would it be better for the district**
6 **to use its money for projects or penalties?**
7 A. I'm -- I think that's a bit of an odd
8 question, and I'm not quite sure how to answer
9 that.
10 **Q. Okay. All right. So in the recovery**
11 **factor, was the district given any credit for the**
12 **storage and continued treatment of effluent coming**
13 **into the plant all day?**
14 A. Can you repeat the question?
15 **Q. This is -- every time I have to repeat**
16 **it it's cutting into my time.**
17 A. I believe that it was -- that you're
18 asking how was the discharge volume calculated?
19 **Q. No, I'm not.**
20 MS. MACEDO: Are you talking about the
21 susceptibility to clean up the --
22 BY MS. THORME:
23 **Q. This is the recovery step that you had**
24 **just went through. There were certain steps and**
25 **one of them is the recovery step.**

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1 A. There is no recovery.
2 MS. MACEDO: Are you talking about
3 susceptibility to clean up and abatement?
4 BY MS. THORME:
5 **Q. Right. Cleanup and cooperation.**
6 A. Step four.
7 MS. JAHR: Yes. She's talking about
8 step four.
9 BY MS. THORME:
10 **Q. Yes. I was calling it the wrong thing.**
11 **It was one of the adjustment factors. And so my**
12 **question was, were they given credit for the**
13 **storage and continued treatment during the day?**
14 **Because you're looking at whether 50 percent was**
15 **recovered or not, so what do you use as the basis**
16 **of that?**
17 MS. MACEDO: I'm sorry. You're talking
18 about the susceptibility and cleanup factor, which
19 is in step one?
20 MS. JAHR: There's two steps involving
21 cleanup and --
22 MS. DISIMONE: You're talking about
23 cooperation and cleanup in step four?
24 MS. JAHR: No, I think she just said
25 50 percent, which is step one.

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1 BY MS. THORME:
2 **Q. I'm sorry. So less than 50 percent of**
3 **the discharge is susceptible to cleanup or**
4 **abatement. So the question is, did you take into**
5 **account that had they not been able to keep**
6 **treating and storing, that the number would have**
7 **been higher?**
8 A. I missed what you had decided in coming
9 back to the podium. So what -- which part of this
10 table are we talking about? I apologize.
11 **Q. Factor three.**
12 A. Factor three of step one?
13 **Q. Yes.**
14 A. Okay.
15 MS. MACEDO: Did you give them credit?
16 MS. DISIMONE: That is a separate issue
17 from the 1,138,925 gallons that was -- that is at
18 issue for the spilled volume. The type of holding
19 that you're describing within the lagoon while the
20 spill was happening, that eventually made it
21 through to the headwork and were going through the
22 treatment process, is not a part of this penalty.
23 BY MS. THORME:
24 **Q. Okay. So where was credit given for**
25 **the fact that they kept treating all during the**

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1 **day and meeting their effluent limits out into the**
2 **ocean?**
3 A. Because you kept treating and did not
4 bypass any wastewater treatment plant -- any water
5 that went through the wastewater treatment plant
6 did not bypass any treatment process, that is how
7 you have ended up getting credit for it. You
8 didn't have a bypass event, so you treat it.
9 **Q. Okay. So what evidence of sickness is**
10 **in evidence? You mentioned that there was**
11 **evidence of sickness that you have in your case.**
12 A. The district has references -- the
13 prosecution team has done interviews with
14 homeowners and residents, and I sat here and heard
15 public testimony that --
16 **Q. But that's not evidence.**
17 A. -- that he was sick.
18 **Q. That's not evidence. That's hearsay.**
19 **So what evidence do you have?**
20 MS. MACEDO: Are you asking her?
21 MS. DISIMONE: I can defer to other
22 prosecution team members for specific evidence,
23 the document numbers to refer to.
24 BY MS. THORME:
25 **Q. What percent of the water that**

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1 **eventually went out to the ocean was sewage?**
2 A. I don't have that number.
3 **Q. Okay. And are the staff costs that are**
4 **in this table, are those discretionary?**
5 A. Could you clarify what you mean by
6 "discretionary"?
7 **Q. Are they mandatory that this water**
8 **board has to give you those costs, or is it a**
9 **discretionary function that they don't have to**
10 **give you those costs?**
11 A. It is a determination that they make
12 under the enforcement section or enforcement
13 policy 2010. The board can decide that that is
14 appropriate cause under that particular step.
15 **Q. Okay. So it is discretionary then?**
16 A. Yes.
17 MS. THORME: Okay. No more questions.
18 MR. YOUNG: Redirect?
19 MS. MACEDO: Yes. Just a minute.
20 MR. YOUNG: I'd just like to clarify
21 something. I thought that we heard that public
22 commentator Steve Ehens, I thought he said that he
23 had taken the oath.
24 MS. THORME: It's still -- the public
25 comment period is not -- under the hearing

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1 procedures the public comment period is not
2 evidence.
3 MR. YOUNG: Okay.
4
5 REDIRECT EXAMINATION
6 BY MS. MACEDO:
7 **Q. Ms. DiSimone, in the susceptibility**
8 **cleanup and abatement factor, step three of step**
9 **one, the district and prosecution team actually**
10 **agree about that factor, do they not?**
11 A. They do.
12 **Q. And that factor is either a one or a**
13 **zero based on whether greater or less than**
14 **50 percent of the matter can be cleaned up; isn't**
15 **that correct?**
16 A. That's correct.
17 **Q. Whether or not the material was cleaned**
18 **up, correct?**
19 A. That's correct.
20 **Q. Ms. Thorme just asked you what**
21 **percentage of the material discharged into the**
22 **Pacific Ocean and other surrounding water bodies**
23 **was sewage, correct?**
24 A. She did.
25 **Q. But isn't the -- doesn't the permit**

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<p>1 also prohibit sewage when it is mixed with storm 2 water as well? 3 A. It does. 4 MS. MACEDO: I have nothing further. 5 MR. YOUNG: Any recross? Okay. We'll 6 go to board questions. Mr. Johnston? 7 MR. JOHNSTON: Good afternoon. 8 MS. DISIMONE: Hi. 9 MR. JOHNSTON: So under the permit is 10 sewage and storm water mixed treated in a 11 discharge, treated the same as if it were all 12 initially sewage and had no storm water mixed with 13 it? 14 MS. DISIMONE: Yes. 15 MR. JOHNSTON: So a gallon of discharge 16 mixed sewage and storm water is the same as a 17 gallon of discharged sewage that had no storm 18 water mixed in it? 19 MS. DISIMONE: Yes, to some extent, 20 under the permit, yes. If you're trying to 21 differentiate how to describe the characteristics 22 of that mixed waste versus another waste, I would 23 recommend looking at factor two under step one, 24 where it talks about the characteristics of the 25 discharge. And I adjusted with wet weather SSOs</p> <p style="text-align: right;">Page 222</p>	<p>1 responded to their notice of violation, and yet 2 for the cooperation and culpability you give them 3 a one. It's like if you did something wrong you 4 immediately call into a debit or however -- an 5 assessment, but what would you have to do to 6 actually earn some credits in that category, above 7 what they did? 8 MS. DISIMONE: I didn't -- there would 9 be voluntary cleanup efforts that we typically 10 see. From myself, there was proposals about an 11 ecological study about the impacts of the spill 12 afterwards that had actually -- I've seen district 13 records that indicate they were going out to bid 14 for that type of report and study, and yet that 15 was never done. I haven't seen that report 16 mentioned by the district or discussed. 17 There's difficulties in obtaining 18 information concerning the prosecution team before 19 my time on the case, so I think on balance I'm 20 sensitive to the emergency nature of a spill 21 during a flood time. And I acknowledge that 22 there's a lot that goes on and a lot of 23 coordination effort. I'm certainly sensitive to 24 that as a former employee of the city operating a 25 wastewater treatment plant, I get that. But I</p> <p style="text-align: right;">Page 224</p>
<p>1 that where sewage is mixed with storm water that's 2 assigned a factor score of three. 3 MR. JOHNSTON: That's where sewage -- 4 okay. So the sewage has been assigned a factor of 5 three and being mixed with storm water, and what 6 you're saying is it would potentially have been 7 assigned a higher number factor if it were not 8 mixed with storm water? 9 MS. DISIMONE: Could have. 10 MR. JOHNSTON: Thank you. 11 MR. YOUNG: Mr. Jordan? 12 MR. JORDAN: Ms. DiSimone. 13 MS. DISIMONE: Hi. That's close 14 enough. 15 MR. JORDAN: Okay. I just have a 16 couple questions on step four. And I tend to be 17 agreeable with your statements on culpability, 18 that you felt it was a conservative number, but 19 I'm confused on your presentation of the ranking 20 on the cleanup operation, the history of 21 violations being a neutral number. I'm just 22 wondering if you could tell me some more about 23 that because it seems like in the description you 24 reward the discharger's behavior. You say they 25 responded quickly, they notified the public, they</p> <p style="text-align: right;">Page 223</p>	<p>1 also don't feel that they went beyond what was 2 baseline required in dealing with the cooperation 3 after the spill and in the subsequent 4 investigations reporting and discharge 5 calculations. 6 MR. JORDAN: Have you done more than -- 7 have you done the spreadsheet process of more than 8 one spill? 9 MS. DISIMONE: This penalty calculation 10 methodology is new for this board. It came about 11 with a 2010 enforcement policy, so the answer is 12 no. But this is the board's first time with it as 13 well. 14 MR. JORDAN: Would you say then, 15 generically, your stance on the cleanup and 16 cooperation line is that if you just do what's 17 legally required it's a one? 18 MS. DISIMONE: Yes. 19 MR. JORDAN: Is that kind of your 20 philosophical line in the sand and you work from 21 there? 22 MS. DISIMONE: Yes. 23 MR. JORDAN: Okay. And then on the 24 history of violations, I get -- I get that 25 explanation. I understand what you're saying.</p> <p style="text-align: right;">Page 225</p>

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<p>1 But then on the history of violations you have 2 none. I don't -- again, I just don't understand 3 from a common sense standpoint of why that's -- 4 why that's a neutral grade rather than a reward, 5 so to speak? 6 MS. DISIMONE: It takes a -- 7 MS. MACEDO: You can't go lower on that 8 factor. 9 MR. JORDAN: Oh, you can't. I'm sorry. 10 That's only a penalty, though? 11 MS. DISIMONE: Yes. 12 MS. THORME: Ms. Macedo is testifying 13 again. That's not true. 14 MR. JORDAN: I won't listen to her. 15 Can you go any lower than that? 16 MS. DISIMONE: My previous testimony 17 did include the recognition that you cannot go 18 lower than that. 19 MR. JORDAN: I understand. And then on 20 step seven on the justice category, the dollars 21 you're justifying for staff time, do those staff 22 dollars come back to the region or do they stay in 23 the abatement fund? 24 MS. DISIMONE: That's a good question. 25 I'm going to have to defer to someone else on</p> <p style="text-align: right;">Page 226</p>	<p>1 MR. JORDAN: Does that -- in your 2 opinion does that phrase "justice," also include 3 damage to the members of the community or other 4 types of occurrences like that? Typically, when 5 you hear that word justice in this setting, you 6 start to open up to all types of things that go on 7 out in the community. You've identified just hard 8 costs for staff? 9 MS. DISIMONE: It's the board's 10 discretion, that particular factor may go up or 11 down at the board's discretion and determination 12 of what other factors there could be. 13 MR. JORDAN: Okay. Thank you very 14 much. 15 MR. YOUNG: Dr. Wolff? 16 MR. WOLFF: Thank you. You were asked 17 earlier about the district if machinery fails, and 18 you answered yes. From your experience working 19 with the San Luis Obispo treatment plant, would 20 that be the reason why a preventative maintenance 21 program is very important in having redundancy 22 systems in good condition and good operating 23 condition is critical? 24 MS. DISIMONE: Absolutely. 25 MR. WOLFF: Thank you.</p> <p style="text-align: right;">Page 228</p>
<p>1 that. I don't believe they come here. I think 2 they're part of -- 3 MR. JORDAN: So would there be -- would 4 there be another witness coming up that -- 5 MS. DISIMONE: For the staff -- for the 6 staff costs, though. Oh, that. Half of the total 7 penalty amount is able to be set aside for 8 supplemental environmental projects. So in that 9 sense the 75,000 is rolled into that total penalty 10 amount. A portion of it could come back locally 11 as a step four supplemental environmental 12 project. 13 MR. JORDAN: I actually just looked up 14 the water code section 13385. It's like two lines 15 that talks about adjustment. It says -- well, it 16 says and other factors that justice may require, 17 that's as little as it says. 18 MS. DISIMONE: I would point you to the 19 2010 enforcement policy as being further guidance 20 for that. There's a little more than two lines on 21 that. But in essence, the board has to make 22 specific findings if they are to determine that 23 there are other factors that would require 24 adjustment to the final penalty amount proposed 25 here as justice may require.</p> <p style="text-align: right;">Page 227</p>	<p>1 MR. YOUNG: Mr. Harris? 2 MR. HARRIS: Just to clarify the 3 75,000, that's not all regional board staff costs, 4 that would also, I believe, the office of 5 enforcement itself? 6 MS. DISIMONE: Correct. As the 7 prosecution team mentioned in the opening 8 statement with regards to the entire -- 9 MR. HARRIS: So you're a water resource 10 control engineer, correct? 11 MS. DISIMONE: I am. 12 MR. HARRIS: And you're a permit writer 13 at the regional board? 14 MS. DISIMONE: Yes, I am. 15 MR. HARRIS: How long have you been 16 writing permits? 17 MS. DISIMONE: I've been writing 18 permits for a little over a year I've been into 19 this program. Previous to that I did cleanup, and 20 then with the city I was -- City of San Luis, I 21 was also involved in wastewater treatment plants 22 permitting extensively. 23 MR. HARRIS: Have you ever taken the 24 U.S. Permit writer's class? 25 MS. DISIMONE: Yes, I have.</p> <p style="text-align: right;">Page 229</p>

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1 MR. HARRIS: And based on what you
2 learned in that class and based on your
3 experience, do you think the event that we're
4 discussing today would qualify as an upset?
5 MS. DISIMONE: No.
6 MR. HARRIS: Do you think the event
7 that we're discussing today would qualify as a
8 bypass?
9 MS. DISIMONE: No.
10 MR. HARRIS: All right. Thank you.
11 MR. YOUNG: Mr. Jeffries, any
12 questions?
13 MR. JEFFRIES: No, they've been asked
14 already.
15 MR. YOUNG: Okay. All right. Does
16 that conclude this witness?
17 MS. THORME: Mr. Chair, I just wanted
18 to ask one follow-up question to get an answer for
19 a board member --
20 MR. YOUNG: Go ahead.
21 MS. THORME: -- Jordan.
22 So if you could pull up Exhibit 102,
23 Page 15, please. So this is one of the
24 prosecution team's exhibits, which was the ACL for
25 the North Tahoe Public Utility District, which

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1 actually occurred on the very same day, December
2 19, 2010. And as you can see there, they were
3 given an adjustment down for 20.9. Were you aware
4 of that, Ms. DiSimone?
5 MS. DISIMONE: I was not aware of
6 that.
7 MS. MACEDO: I was not aware of that
8 either, but to the extent that we're talking about
9 the North Tahoe ACLC North Tahoe, actually, the
10 regional board of the recommended penalty from the
11 prosecution team, so if you want to bring that to
12 the board's attention I'm happy that you did.
13 MS. THORME: Well, I didn't bring that
14 part of it to it. If that's what you're
15 testifying, that wasn't it.
16 MR. YOUNG: Mr. Harris, any questions?
17 MR. HARRIS: No.
18 MS. MACEDO: Shall we call our next
19 witness?
20 MR. YOUNG: Yes. And can we find
21 out -- do we need to break for the reporter?
22 THE COURT REPORTER: I think she's
23 coming at 3:00.
24 MR. YOUNG: At three o'clock. So we
25 are going to have to break. It's three o'clock.

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1 Let's take a break.
2 (Recess taken.)
3 MR. YOUNG: Ms. Macedo, call your next
4 witness.
5 MS. MACEDO: Absolutely. I'd like to
6 call Jeff Appleton to the stand.
7
8 DIRECT EXAMINATION
9 (Jeffrey Appleton)
10 BY MS. MACEDO:
11 **Q. Mr. Appleton, good afternoon. I just**
12 **want to confirm for the record that you took an**
13 **oath this morning?**
14 A. Yes, I did.
15 **Q. Okay. And can you state your full name**
16 **for the record?**
17 A. Jeffrey Wayne Appleton.
18 **Q. And where do you currently work,**
19 **Mr. Appleton, or who are you currently employed**
20 **by?**
21 A. South San Luis Obispo County Sanitation
22 District.
23 **Q. And what was your most recent title**
24 **there?**
25 A. Operator three.

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1 **Q. Can you describe your duties there?**
2 A. For what position?
3 **Q. Operator three.**
4 A. Operation of maintenance of the
5 district's wastewater treatment plant.
6 **Q. And what did that include?**
7 A. I never actually performed the duties
8 of an operator three; so --
9 **Q. Okay. How about before operator three,**
10 **what was your -- what was your prior position?**
11 A. I was a plant superintendent.
12 **Q. There you go. And what were your**
13 **duties as plant superintendent?**
14 A. The overall operation and maintenance
15 of the district's wastewater treatment plant,
16 including filing monthly water quality discharge
17 reports, attending board meetings, overseeing the
18 day-to-day operations of the wastewater treatment
19 plant, personnel management. Basically I was the
20 one in charge at the treatment plant.
21 **Q. Okay. How many employees reported to**
22 **you?**
23 A. It varied. On an average it was
24 between seven and nine.
25 **Q. Okay. Who did you report to?**

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1 A. To the district administrator,
2 John Wallace.
3 **Q. Did you report to the district board at**
4 **all?**
5 A. I did attend bimonthly district board
6 meetings where I did have a superintendent's
7 report. And I would report issues to the district
8 board of directors.
9 **Q. Were you present on the day of the**
10 **spill in question, December 19th, 2010?**
11 A. Yes, I was.
12 **Q. Now, have you been present all day**
13 **today as we've been talking about some of the**
14 **preventive maintenance issues?**
15 A. Yes, I have.
16 **Q. Okay. I'm going to ask you to look at**
17 **a few of the exhibits that we've gone through, a**
18 **handful of documents that you may have seen**
19 **before. And the first one I'm going to put in**
20 **front of you is Exhibit 2. So on the front page**
21 **of this document it indicates that this is a 2004,**
22 **2005 fiscal year budget. I'd just like to point**
23 **out that on the bottom of the page it indicates**
24 **that you were plant superintendent at this time;**
25 **is that accurate?**

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1 A. Yes, it is.
2 **Q. Okay. I'd like you to flip to Page 3**
3 **of this document. And I'll represent to you that**
4 **this is an excerpt of another fiscal year budget**
5 **from the district. Unless you can recall**
6 **whether -- I mean, are you familiar with budgets**
7 **from the district?**
8 A. Yes, ma'am.
9 **Q. Did you play any part in preparing**
10 **them?**
11 A. Yes, I did.
12 **Q. Okay. And you can take a second to**
13 **review this.**
14 A. Okay.
15 **Q. Do you recall this particular main**
16 **budget item?**
17 A. Yes, I do.
18 **Q. And we talked about electrical issues**
19 **at your deposition. Do you recall that?**
20 A. Yes, I do.
21 **Q. Okay. And do you recall the electrical**
22 **issues leading to, as it's described in this**
23 **document, either electrical fires or a loss of**
24 **power?**
25 A. Yes, I do.

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1 **Q. Do you recall specific instances when**
2 **that happened?**
3 A. Yes, I do.
4 **Q. And can you describe those for me?**
5 A. There were several. Some of the ones
6 that stick out in my head, at one point after the
7 San Simeon earthquake, one of the operators came
8 into my office and told me we had a fire inside a
9 pull box, an electrical pull box at the plant.
10 And in responding I could see smoke billowing out
11 of the electrical pull box, which was rather
12 frightening to me.
13 Fortunately the fire was inside a
14 portion of conduit. It wasn't actually inside the
15 pull box on the No. 2 primary clarifier. The
16 staff did have to do an emergency repair that day
17 and pull a new piece of wire to keep the plant in
18 operation.
19 We had other issues with the wiring. I
20 remember at one point we had another fire inside
21 the conduit for the No. 1 primary clarifier
22 lighting system. It was somewhat of a standard
23 occurrence at some point during the year that we
24 were going to have a conduit that the wiring had
25 failed inside and we'd either have to pull it

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1 ourself or have an electrician come in and pull
2 it.
3 **Q. So our evidence indicates that since at**
4 **least 2004 the electrical system was scheduled as**
5 **an MBI, and that stands for main budget item,**
6 **correct?**
7 A. The district term actually is major
8 budget item.
9 **Q. Oh, excuse me, major budget item. It**
10 **was scheduled for an upgrade since at least 2004.**
11 **And does the fact that this MBI is still on the**
12 **budget in 2010, 2011, mean that that major budget**
13 **item had not been completed?**
14 A. That is my understanding of the
15 district's budget process, yes.
16 **Q. Okay. Despite the fact that these --**
17 **at least two fires occurred, correct?**
18 A. Correct.
19 **Q. Okay. Did you ever bring the problems**
20 **with the electrical to anyone's attention, other**
21 **than including them on the budget reports?**
22 A. Yes, I did.
23 **Q. Whose attention did you bring them**
24 **to?**
25 A. On several different occasions to

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1 members of John Wallace's staff, John Wallace,
2 himself. It was also discussed in depth with the
3 board of directors in several board of directors
4 meetings.
5 **Q. How did you bring it to their**
6 **attention? What did you -- did you ask for it to**
7 **be fixed, did you say that it proposed a danger,**
8 **what did -- how did you do that?**
9 A. Well, I think it's obvious that it was
10 requested to be fixed, because it was placed into
11 the major budget item list. It was obvious that
12 there was deficiencies in the system that were
13 potential hazards. I remember on one occasion
14 when I actually took a section of burned wiring to
15 the board of directors meeting and presented it to
16 the board of directors so they could see what we
17 were dealing with at the plant. We weren't
18 electricians, we were wastewater treatment plant
19 operators. So it was a very difficult situation
20 for us. There were times where we had to repair
21 it to keep the plant running. That wasn't really
22 what we were certified to do.
23 **Q. I'm going to ask you to take a look at**
24 **another exhibit. This is 99 to the prosecution**
25 **team's rebuttal evidence. Before I do that, your**
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1 **attorney's asked me to clarify that you are here**
2 **appearing pursuant to subpoena. You received a**
3 **subpoena from me, correct?**
4 A. Yes, I did.
5 **Q. Okay. Thank you. Are you familiar**
6 **with the district's seal in the top left-hand**
7 **corner?**
8 A. Yes, I am.
9 **Q. Have you seen standard operating**
10 **procedures from the district before?**
11 A. Yes, I have.
12 **Q. Okay. Have you ever prepared or**
13 **received them before?**
14 A. No, I haven't.
15 **Q. Okay. So it appears that this was**
16 **issued on October 29th, 2010. Do you see that**
17 **date?**
18 A. Yes, I do.
19 **Q. Okay. And that it was issued by**
20 **Mr. Bob Barlagio. Do you know who Mr. Barlagio**
21 **is?**
22 A. Yes, I do.
23 **Q. Okay. So going to Page 2 of this**
24 **document, it indicates that -- on B-3 it indicates**
25 **to close all 12-inch valves. Do you see that?**
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1 A. Yes, I do.
2 **Q. Now, does that present any problems to**
3 **you?**
4 A. Yes, it does.
5 **Q. And why is that?**
6 A. During my tenure as the plant
7 superintendent, since the early part of 2000, the
8 valve had been chained and locked in an open
9 position. It was in a sub-grade pit that had the
10 possibility of flooding. And that valve was
11 critical for the standby diesel emergency pump to
12 work. If the valve was closed, the pump couldn't
13 work. So it was obvious that that valve needed to
14 be kept in an open position, so if the pump needed
15 to be started you wouldn't have to go below grade
16 to where the open channels were, the sewage
17 channels that might flood.
18 **Q. Now, I'm going to continue on in this**
19 **exhibit. And on Page 3 of this exhibit, this**
20 **standard operating procedure is dated May 6th,**
21 **2011. Do you see the date?**
22 A. Yes, I do.
23 **Q. Okay. And again, we're looking at**
24 **section B, but now instead of five steps there are**
25 **six steps. And do you see a new step four? And**
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1 **does that more accurately reflect what you think**
2 **the correct procedure is?**
3 A. Yes, it does.
4 **Q. Okay. We also discussed earlier this**
5 **morning some water intrusion issues. Do you**
6 **recall that?**
7 A. Yes, I do.
8 **Q. And we talked about some grading issues**
9 **that you, I believe, brought to the attention of**
10 **the people at The Wallace Group. Do you recall**
11 **that?**
12 A. Yes, I do.
13 **Q. Okay. And this e-mail was one that was**
14 **submitted by the district in Exhibit 71. Down**
15 **here it indicates that in 2007 the headworks**
16 **project had some water ponding issues. And to**
17 **deal with that one of the things that was done was**
18 **this. Do you recall this photo being shown this**
19 **morning?**
20 A. Yes, I do.
21 **Q. Can you describe what this photo**
22 **shows?**
23 A. Sure. This is the pull box that
24 flooded the day of the spill. After completion of
25 the headworks retaining wall, the grading, the
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1 slope of the ground had changed significantly.
2 And what resulted was a low spot, basically a
3 swimming pool directly over the pull box, so even
4 a minimal amount of water drained directly into
5 the pull box.
6 We knew that there was obvious conduit
7 issues, all of the main motor leads for the
8 influent sewage pumps, a 480 volt ran through this
9 box. And we were very concerned about having
10 moisture inside of it.
11 What the staff did is they saw cut
12 about a four-inch section around the edge of it
13 and we placed a berm, a concrete berm or a ramp
14 around it to raise the elevation. What it did was
15 it raised the elevation about an inch and a half
16 above the level of the water, when it was a
17 standing puddle there. And it basically formed a
18 little island in the middle of a great big pond.
19 That was the low spot that surrounded the headway
20 structure.
21 MR. YOUNG: Can I just get
22 clarification on when this photograph was taken?
23 BY MS. MACEDO:
24 **Q. Sure. Mr. Appleton, do you recall when**
25 **this photograph was taken?**

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1 A. Not specifically. Sometime in 2007, I
2 think.
3 MR. YOUNG: And the purpose for that,
4 is that a plastic cover that I see, the top fits
5 into the bottom?
6 MR. APPLETON: No, it's a metal ring.
7 It's a metal cover and a metal ring that sits into
8 it. It's traffic rated.
9 MR. YOUNG: Is that meant to be
10 waterproof?
11 MR. APPLETON: No.
12 MR. YOUNG: So what we see in white is
13 all metal?
14 MR. APPLETON: The inside circumference
15 of the lid is a metal frame, the actual box itself
16 is made out of concrete.
17 MR. YOUNG: I see. The two pictures
18 are the same thing, one at an angle?
19 MR. APPLETON: Yes.
20 MR. YOUNG: Okay.
21 BY MS. MACEDO:
22 **Q. And the purpose of the berm shown in**
23 **this photograph, it wasn't to deal with the**
24 **electrical issues, correct?**
25 A. That is correct.

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1 **Q. And in fact it didn't deal with the**
2 **electrical issues, correct?**
3 A. It did not.
4 **Q. When small amounts of water were**
5 **applied to this, what would happen?**
6 A. Basically, the raised section would
7 protrude from the puddle, the puddle was,
8 depending on where you were standing, out anywhere
9 from 6 inches to 12 inches deep around the
10 headworks. So that made a little island and all
11 of that water would not run into the pull box and
12 affect the leads.
13 **Q. Did ponding issues still exist after**
14 **this fix?**
15 A. Yes, they did.
16 **Q. Okay. Is this the -- I can rotate it.**
17 **Let me see. Is this a final view?**
18 A. I believe so, yes.
19 **Q. Okay. And so the water would just run**
20 **away rather than in?**
21 A. Well, actually, the water would puddle
22 up around it. And the lid was high enough to
23 where the water level didn't pour into the box.
24 **Q. Thank you. We also talked a little bit**
25 **about -- we also talked a little bit about the**

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1 **leaky influent gate and the emergency bypass pump.**
2 **Had any issues with those -- those**
3 **pieces of equipment or those factors at the plant**
4 **been brought to anyone's attention before December**
5 **2010?**
6 A. Yes, they had.
7 **Q. And whose attention were they brought**
8 **to?**
9 A. Specifically, John Wallace's, my direct
10 supervisor. But as I also said, I discussed
11 situations like this with the district board
12 directors during the bimonthly board meetings.
13 **Q. Okay. Let's take those in order. What**
14 **was John Wallace's reaction when you brought**
15 **problems such as that to his attention?**
16 A. He said he had engineers looking into
17 it.
18 **Q. What about the board of directors?**
19 A. They followed John Wallace's lead.
20 **Q. Okay. Was anything ever done in terms**
21 **of responding to the problems?**
22 A. Which specific problems?
23 **Q. Let's talk about the pump.**
24 A. Okay.
25 **Q. Was anything done in terms of pump**

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1 **issues?**
2 A. We did initiate conversations with pump
3 manufacturers. Most of it was done in-house,
4 though, by my staff. The former shift supervisor
5 Scott Mansco spent months e-mailing and talking to
6 the text support from the pump manufacturer. I
7 don't believe that the administrative staff was
8 too involved with it, but we never did correct the
9 problems with the pump.
10 **Q. Okay. And what about the leaky**
11 **influent gate?**
12 A. John Wallace had been made well aware
13 of that. I sent him an e-mail with documented
14 pictures of the gate leaking. Again, another
15 engineering project was authorized for a headworks
16 repair project, but it had never been completed by
17 the time this spill had happened.
18 **Q. Who was in charge of conducting the**
19 **engineering project?**
20 A. That would be John Wallace and his
21 group, the Wallace Group.
22 **Q. Okay. When the actual physical labor**
23 **for either replacing or improving some of these**
24 **things, the ponding issues, repairing the leaky**
25 **influent gate weren't completed, were any reasons**
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1 **given? Was it that the district didn't have**
2 **money, that they were too expensive? I mean, were**
3 **you given a concrete reason?**
4 A. I don't think I was ever given a
5 concrete reason. It was more along the lines of
6 we're continuing to look into it from an
7 engineering standpoint. Some issues at the plant
8 suggested a pull box. We couldn't wait, so we did
9 what we could in-house. We could fix a very
10 obvious problem, but issues such as the leaking
11 influent gate were never repaired. They were
12 discussed at length many, many times, but no
13 actual work has ever been done on the structure.
14 **Q. In terms of the berm that we just**
15 **looked at, Exhibit 71, who was responsible for**
16 **doing that?**
17 A. The operation staff did it in-house.
18 **Q. Okay. So it didn't really cost the**
19 **district anything?**
20 A. Materials.
21 **Q. Okay. You heard Mr. Thoma speak this**
22 **morning?**
23 A. Yes, I did.
24 **Q. Did you have any disagreements with his**
25 **testimony?**
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1 A. Yes.
2 **Q. Do you recall what they are?**
3 A. Well, specifically, the shunt switch
4 issue and the sequence of breakers tripping in the
5 MCC building on the day of the spill. I was the
6 operator responding to the MCC building and I know
7 what breakers were tripped. The No. 4 influent
8 pump breaker was tripped. The MCC No. 1, it was a
9 100 amp breaker which feeds the four influent pump
10 breakers was also tripped. Myself, personally,
11 tried to reset both breakers the morning of the
12 spill. Neither one would reset.
13 I believe Mr. Thoma said that the No. 1
14 MCC 100 amp breaker was tripped, but the pump
15 breakers weren't. That's not correct.
16 Issues with the shunt switch were known
17 the day of the spill. The shunt switch cover had
18 to be removed and all of the water drained out of
19 the conduit the day of the spill and contact
20 cleaner sprayed inside of it, because it was still
21 connecting the signal and preventing the breaker
22 from being reset. We let it dry out for an hour
23 or so while the contractors were working
24 downstairs on the pumps. So water from the
25 conduits for the shunt switch was very well-known
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1 the day of the spill.
2 **Q. Okay. Mr. Thoma said he interviewed**
3 **some district employees to understand what**
4 **happened on the day of the spill. Did he meet**
5 **with you?**
6 A. No, he didn't.
7 **Q. Okay. I believe the district is going**
8 **to put forth a number of witnesses for its case in**
9 **chief, but I don't believe they're putting forth**
10 **any current employees or anyone who currently**
11 **works at the district itself. You're the only**
12 **person who responded to the spill that day and is**
13 **a current district employee. Can you tell us**
14 **about the day of the spill?**
15 A. Sure. Where would you like me to
16 start?
17 **Q. Well, when did you get a call that you**
18 **needed to report to the plant?**
19 A. I received a call from Rick Jackman,
20 who was the operator on duty that weekend at
21 approximately 8:30. I don't remember the exact
22 time, but it was about 8:30.
23 Operator Jackman informed me that there
24 was severe flooding happening at the plant. They
25 had received several alarms. I think he had
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<p>1 another operator there that he had called in for 2 assistance, Billy Longhill. And neither one of 3 them felt comfortable with some of the issues that 4 they had to handle, so they requested my 5 assistance.</p> <p>6 I responded to the plant. Arrived 10 7 or 15 minutes later. Arriving at the plant, I 8 found that all the site drains were backed up and 9 overflowing. They were deluged with water. There 10 was large amounts of water encroaching upon the 11 plant from the security court area.</p> <p>12 I met with the operators and they gave 13 me a brief run-down of some critical issues that 14 they were facing. There was a failed alarm on the 15 generator, the standby generator. We found out 16 that it was afloat. There was water in the room, 17 but the generator was elevated high enough that 18 that wasn't a critical issue at the time.</p> <p>19 The sump pump situation was, in my 20 viewpoint, very critical, because we had water 21 that was pooling around the influent structure and 22 was backing up from the site drainage, and 23 couldn't evacuate the water fast enough. I was 24 afraid that very quickly the water would start to 25 pour into the structure.</p> <p style="text-align: right;">Page 250</p>	<p>1 I entered the pump room and went 2 downstairs and found water pouring out of the 3 light fixtures, out of the sockets in the wall.</p> <p>4 Water was pouring out of the thick head 5 connections along the -- the large influent pump 6 motors, and there was about a foot of raw sewage 7 in the room. Obviously, the sump pump was 8 overwhelmed or had failed to keep up.</p> <p>9 The sewage was about six inches away 10 from covering the motors. To me it was very 11 important to try to keep the motors from becoming 12 covered with water. If they were only damp, that 13 means I could have them dry in about 12 hours and 14 have them put back on line. But if they became 15 submerged they'd have to be rewound and that would 16 take days and we wouldn't have any pumping.</p> <p>17 So my first action was, I left the pump 18 room, I think Operator Jackman was waiting 19 upstairs and I told him we have to close the 20 influent gate, the pump room is flooding.</p> <p>21 As we were closing the influent gate, 22 which is supposed to shut down all of the water 23 flow downstream into the pump rooms and wet well, 24 I informed Operator Alan to start the standby 25 generator -- or start the standby pump. We have a</p> <p style="text-align: right;">Page 252</p>
<p>1 I think that at some time around 9:15 I 2 was notified that the influent pumps had failed.</p> <p>3 One of the operators that was on duty came out. I 4 don't remember exactly what I was doing, but they 5 told me the pumps had failed. So I responded to 6 the MCC room and that's where I found the tripped 7 breakers, the 100 amp service breaker and also the 8 No. 4 influent sewage pump breaker.</p> <p>9 I attempted to reset them several 10 times. They wouldn't reset, so I immediately went 11 to the influent pump room to eyeball the pumps 12 themselves to see if I could find out what was 13 happening.</p> <p>14 Entering the influent structure, it 15 became obvious that it was flooding. It's a 16 two-story structure, the upper level is a landing 17 where there are check valves and piping. And then 18 a story below that is where the pump rooms are 19 located.</p> <p>20 Going down the stairs to the upper 21 landing, I saw water shooting out of the cracks in 22 the concrete, two or three feet. And there was 23 water pouring out of the penetrations through the 24 wall. Electrical conduit boxes had water pouring 25 out of them.</p> <p style="text-align: right;">Page 251</p>	<p>1 large diesel pump at the front end of the plant.</p> <p>2 As Operator Jackman and I were closing 3 the influent gate, Operator Alan informed me that 4 the pump wouldn't start. So I told him keep 5 trying. We have to close this gate. The 6 gate takes -- it's a two-man job and it takes a 7 while to get the gate closed.</p> <p>8 We eventually got the gate closed and 9 the sewage immediately began pouring out of the 10 influent structure. It had filled up the 11 collection system. And since we had shut off the 12 gate there was nowhere else for it to go. So 13 sewage began pouring out of the influent 14 structure.</p> <p>15 I went to the emergency standby pump, I 16 tried to start it. I spent several seconds with 17 it. There was some type of a fault in the 18 software controller, it has a computerized 19 software controller for the pump. After several 20 seconds I couldn't get it to start. I knew we 21 were in big trouble, so I went inside and started 22 making some calls for assistance.</p> <p>23 One of the first calls that I made was 24 to a local contractor. His name is Chuck Ellison 25 and he runs a company called Fluid Resources</p> <p style="text-align: right;">Page 253</p>

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<p>1 Management. They specialize in wastewater and 2 wastewater treatment plant systems. I knew that 3 they had a skill set to deal with the issues that 4 we were facing, because there were multiple 5 issues. We needed an electrician, a millwright, a 6 plumber and everything else. And Chuck's company 7 could handle all of it.</p> <p>8 Chuck responded a short time later, I 9 do not remember the exact time, I was busy with 10 other things, with two of his crew members. He 11 asked me, "Where do you want me to start? Where 12 do you need help at?"</p> <p>13 I said, "Start at the pump. See if you 14 can get the pump running."</p> <p>15 At this point I think I informed one of 16 my operators to start making the proper 17 notifications to water quality health department. 18 Aaron Allan was assigned to do that. We had, 19 basically, a flow chart at the plant that had the 20 numbers on it. And I gave it to him and I said, 21 "Start calling people. Write down who you talked 22 to and what time you talked to them and document 23 it."</p> <p>24 I went back inside to see how we were 25 doing with the emergency standby pump. One of the</p> <p style="text-align: right;">Page 254</p>	<p>1 able to get the wet well area de-watered about 2 two o'clock in the afternoon. Was able to open 3 the discharge valve on the standby pump fully, but 4 it wasn't pumping enough to prevent the spill and 5 the overflow.</p> <p>6 Previously in the day I had made a 7 couple calls to some public agencies. I had 8 called Shane Taylor at the City of AG, and Mike 9 Ford, I believe, with the City of Grover, to see 10 if they had any pumps we could use, and they 11 didn't.</p> <p>12 When I contacted the superintendent of 13 the Pismo Beach Wastewater Treatment Plant, Steve 14 Stewart, and I knew he had several big pumps. And 15 I said, "Man, if you can help us, we really need 16 some help."</p> <p>17 He did bring a pump over later that 18 afternoon. It was about 4:00 or five o'clock. 19 The pump wouldn't start, the battery cables were 20 corroded. The battery was dead. It took us a 21 couple hours to get the pump started.</p> <p>22 By this time I had sent the contractor 23 down into the pump room. They had ascertained 24 that one of the influent pumps was still 25 serviceable if we had conductors that were above</p> <p style="text-align: right;">Page 256</p>
<p>1 FRM employees were able to start the pump, I'm not 2 exactly sure how. We started the pump and 3 immediately found out that the discharge valve was 4 closed, which was located downstairs in the wet 5 pit. The wet well had four feet of sewage in it, 6 but if we didn't get the pump started we were in 7 big trouble.</p> <p>8 So I entered the pit and tried to open 9 the valve. I got it open about halfway, maybe a 10 third. I'm not really sure, that's a guesstimate, 11 because it was kind of busy, until the water got 12 deep enough and I couldn't open it anymore. The 13 sewage got deep enough and I had to evacuate.</p> <p>14 The pump was running and we were 15 pumping some. Water was leaking through the 16 influent gate and water was overflowing from the 17 main trunk line and it quickly filled up the 18 entire wet well. It was about 20 feet deep and it 19 was -- where this valve was located was about 20 20 feet below the raw sewage that we had to pump 21 out.</p> <p>22 So I told one of the operators to get 23 another portable standby pump that we had. We had 24 a six-inch diesel standby pump and we began 25 de-watering the wet well area. We were finally</p> <p style="text-align: right;">Page 255</p>	<p>1 ground. Fortunately, we had begun that process 2 earlier in the day to run spare conductors above 3 ground. I knew the conduit in the ground were 4 full of water and I didn't trust putting it back 5 in service.</p> <p>6 We got the Pismo pump started. About 7 8:30 or nine o'clock that night we were able to 8 bring the No. 3 sewage influent pump back online. 9 And at that point we were able to start lowering 10 the level of the water in the collection system.</p> <p>11 About ten o'clock it was down low 12 enough that we weren't in the spill mode. We 13 removed the three influent pump motors. They had 14 not been submerged, fortunately for us, they only 15 got damp. We had them transported to a local 16 repair shop, where they dried them. And the 17 following day they were replaced, go back in 18 service and brought back online.</p> <p>19 The following morning -- we were 20 experiencing a lot of problems the previous day 21 with the standby pump stalling out. We couldn't 22 figure out why. We thought it was a software 23 problem with the controller, or it just died. And 24 every time it died sewage would begin to flow out 25 of the influent structure.</p> <p style="text-align: right;">Page 257</p>

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<p>1 The following day it happened again, we 2 had another spill. We received a report that at 3 the corner of North Swing and Coolidge, a street 4 in the local area, had overflowed that day, so we 5 responded to it.</p> <p>6 I believe that the repair shop had the 7 influent motors done by about four o'clock that 8 day. And they were reinstalled and back up and 9 running by about ten o'clock that night. So by 10 about ten o'clock Monday night we basically had 11 pulled all the motors, transported them, dried 12 them, rewired everything and had the plant back up 13 and running and meeting our discharge 14 requirements.</p> <p>15 Q. You know, I put up on the screen a page 16 from Mr. Thoma's declaration, and I'm certainly 17 not an electrician, but this is the pull box in 18 the headworks room, yes?</p> <p>19 A. It's an illustration that represents a 20 pull box.</p> <p>21 Q. I'm sorry. You're right. Now, did 22 this -- I'm pointing on my screen and that's not 23 helpful at all. This here is a pull box, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And on the day of the spill, did it</p> <p style="text-align: right;">Page 258</p>	<p>1 have a circular chart, the top range is ten 2 million gallons a day. And we actually saw a flow 3 that flatlined at ten million. And then we 4 calculated the flow curve, there probably was a 5 peak flow of 13 million gallons, 13 or 14 million 6 gallons a day flow rate.</p> <p>7 Q. And when was that?</p> <p>8 A. I don't remember the exact time frame, 9 other than it was around the time of the San 10 Simeon earthquake.</p> <p>11 Q. And in evaluating some of the paperwork 12 in this case, since you've been involved in giving 13 a deposition, and you came up with the spill 14 estimation, you noticed the different discharge 15 points, including the manholes and the private 16 residences. And it seems that you may be the only 17 one who noticed that the discharge at the 18 headworks existed. Can you explain a little bit 19 about that?</p> <p>20 A. Sure. After the influent pumps failed 21 and we were unable to start the emergency standby 22 pump, the collection system filled up and there's 23 an opening, a grading that set directly over the 24 incoming trunk line located within the flood valve 25 containment wall around the headworks. So we were</p> <p style="text-align: right;">Page 260</p>
<p>1 fill completely with water?</p> <p>2 A. Yes, it did.</p> <p>3 Q. And did anyone have to drain it?</p> <p>4 A. No. All the water drained down through 5 the conduits into the motor connection heads.</p> <p>6 Q. Now, on the day of the spill, 7 Mr. Appleton, do you know how high the flows were?</p> <p>8 A. The last documented flow rate that we 9 had before the flow meter fell, was a flow rate of 10 8.4 million gallons per day.</p> <p>11 Q. Do you know the general capacity at the 12 plant?</p> <p>13 A. There's two different capacities. 14 There's the dry weather capacity, when there's no 15 precipitation or INA, and there's a wet weather 16 capacity. The plant's dry weather capacity I 17 believe is five million gallons per day. And I 18 think -- I'm not exactly sure of the wet weather 19 capacity but I do believe it's nine million 20 gallons per day.</p> <p>21 Q. And what's the largest flow capacity 22 you've ever seen at the plant?</p> <p>23 A. Well, we weren't actually able to 24 verify the data, but by calculating the curve, we 25 actually had a flow that went off the chart. We</p> <p style="text-align: right;">Page 259</p>	<p>1 able to actually visualize and see the water level 2 coming up when the influent pumps failed. I'm not 3 sure if that answers you question, but --</p> <p>4 Q. So for example, this is a photo of the 5 headworks?</p> <p>6 A. That's actually the opening in the 7 headworks wall where you can access where the 8 control gate is, the influent control gate. You 9 can walk through that door there and you can see 10 grading there and there's some pipework that goes 11 down in the influent line.</p> <p>12 When the influent pumps failed and we 13 closed the gate, raw sewage started pouring out of 14 that doorway there at a depth of about six or 15 eight inches.</p> <p>16 Q. So this would represent an additional 17 discharge point on the day of the spill?</p> <p>18 A. If it was not taken into consideration 19 by other spill amounts, absolutely. There was 20 spilling numerous times during the day. That's 21 the standby pump, the big black unit there, that 22 you can see. And the standby pump failed numerous 23 times throughout the day and it takes several 24 minutes to restart it. And every time during the 25 restart process, again, raw sewage would flow out</p> <p style="text-align: right;">Page 261</p>

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1 of that doorway in massive amounts.
2 **Q. Did you assign anyone from the district**
3 **to take either video or photographic evidence of**
4 **either particular manholes or discharge locations**
5 **on the day of the spill?**
6 A. I don't know if I did specifics on
7 discharge locations, but I gave Operator Jackman a
8 camera and told him, "Your job today is to take
9 pictures and document what happens."
10 **Q. Okay. And have you ever seen those**
11 **photos?**
12 A. No, I have not.
13 MR. YOUNG: Let's take our break and
14 we'll change out reporters.
15 MS. MACEDO: Oh, sure. Thank you.
16 - - -
17 (Marcy Styles, CSR No. 10604, replaced Judy J.
18 Williams, CSR No. 7314.)
19 /////
20 /////
21 /////
22 /////
23 /////
24 /////
25 /////

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1 Friday, September 7, 2012
2 Saturday, September 8, 2012
3 San Luis Obispo, California
4 * * *
5
6 MR. YOUNG: Okay. Folks, we're going to resume
7 our hearing.
8 And Madam Court Reporter, would you like
9 to have everyone -- do you need anybody to introduce
10 themselves to you?
11 THE REPORTER: Yes, please, that would be
12 helpful. Thank you.
13 MR. YOUNG: Okay. Melissa, why don't you start
14 on this end (indicating).
15 MS. THORME: So we're representing the South
16 San Luis Obispo County Sanitation District.
17 My name is Melissa Thorme, T-h-o-r-m-e,
18 and Olivia Wright, W-r-i-g-h-t.
19 MS. MACEDO: And I am Julie Macedo,
20 M-a-c-e-d-o, for the prosecution team.
21 MR. YOUNG: Okay. And you know who we all are
22 because we have tags up here.
23 MS. JAHR: And my tag is wrong. My last name
24 is Jahr, J-a-h-r.
25 MR. YOUNG: All right. Where were we, on

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1 Mr. Appleton? Was Mr. Appleton --
2 MR. JOHNSTON: That's the name of the witness.
3 MR. YOUNG: Mr. Appleton, do you want to go
4 ahead and identify yourself again?
5 THE WITNESS: Yes.
6 MR. YOUNG: We have a new reporter.
7 THE WITNESS: My name is Jeffrey Wayne
8 Appleton. I live in Grover Beach, California.
9 MR. YOUNG: Okay. Let's continue.
10 MS. MACEDO: I just have a few more questions,
11 Mr. Appleton.
12
13 DIRECT EXAMINATION RESUMED
14 BY MS. MACEDO:
15 **Q We were talking about the discharge**
16 **point -- or excuse me, the headwork being discharged**
17 **point on the date of the spill. Can you approximate**
18 **how many gallons discharged from the headworks?**
19 A I can approximate it. They did a rough
20 calculation. There is a way to calculate the weir
21 overflow rate if you know the width of an opening and
22 the depth of the water flowing out of it. It is a
23 rough approximation.
24 But the rough approximation that I did
25 during the time of the sewage that was flowing through

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1 the doorway, and how it ran into the ground, I came up
2 with a rough amount of approximately 700,000 gallons.
3 **Q And what is your approximate estimate --**
4 **or excuse me, what is your estimate of the volume of**
5 **the spill on December 19th, 2010?**
6 A My calculations came back with the number
7 that I reported to water quality and my draft was 2.5
8 million gallons to 3 million gallons. It was a range.
9 One was a last known flow rate, which was 8.4 million
10 gallons per day. And one was with a more realistic
11 flow curve, and that resulted in a spill amount of 3
12 million gallons per day.
13 And I used the numbers that were
14 generated by the data telemetry flow meter units inside
15 the plant and both on the headworks and the head fall.
16 And they calculate the amount of flow that passes
17 through them. And I used those numbers in calculating
18 my spills.
19 **Q And have you ever deviated from that**
20 **estimate?**
21 A No, I have not.
22 **Q Have people tried to get you to deviate**
23 **from that amount?**
24 A Yes, they have.
25 **Q And who has tried to get you to deviate**

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1 from that amount?
2 A Primarily the District administrator,
3 John Wallace, and his assistant, Tom Alexander.
4 Q Okay. I anticipate questions will be
5 asked by District counsel about a matter that was taken
6 by the Office of Enforcement against you in 2011. So
7 I'm just going to ask you a couple of questions about
8 that.
9 There was an operator certification
10 action letter that was filed against you in 2011; isn't
11 that correct?
12 A That's correct.
13 Q And what was the basis of that claim?
14 A I don't remember the specifics. It had
15 to do with improper sampling techniques and record
16 keeping at the wastewater treatment plant.
17 Q And insufficient evidence was eventually
18 found to support that claim, correct?
19 A That's correct.
20 Q And do you recall the attorney who issued
21 that letter?
22 A I believe it was you.
23 Q Yes, it was me. And so you don't have
24 any reason to do me any favors at this hearing,
25 correct?

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1 A No, I do not.
2 Q And have I ever met you prior to issuing
3 that letter?
4 A No, you have not.
5 Q And have I told you since speaking with
6 you at your deposition, that had I spoken to you in
7 conducting the -- sort of the investigation now,
8 connected to this and all of this, you know, I'd like
9 you to know if I had to do it all over again, things
10 may have turned out differently. So to the extent that
11 we did issue the letter and --
12 MS. THORME: Objection; counsel is testifying
13 again.
14 MS. MACEDO: It's --
15 MR. YOUNG: It's true.
16 MS. MACEDO: Okay.
17 MR. YOUNG: Okay. There is a lot of this going
18 on, and I don't know how to control it, because we're
19 not in the same environment that I'm used to operating
20 in, and we're supposed to be more flexible.
21 BY MS. MACEDO:
22 Q How about this --
23 MR. YOUNG: So --
24 BY MS. MACEDO:
25 Q -- have I promised you anything for your

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1 testimony today?
2 A No, you have not.
3 Q And has anything you said today been
4 untruthful?
5 A No, it has not.
6 MS. MACEDO: Okay. No further questions for
7 this witness at this time.
8 MR. YOUNG: Cross?
9 MS. THORME: Yes.
10
11 CROSS-EXAMINATION
12 BY MS. THORME:
13 Q Good afternoon, Mr. Appleton.
14 A Good afternoon.
15 Q Are you currently on administrative leave
16 from the District?
17 A Yes, I am.
18 Q Okay. And I think you just discussed the
19 investigation by the office of enforcement against you
20 with Ms. Macedo; is that correct?
21 A That's correct.
22 MS. THORME: Okay. Can you switch over,
23 please, so that we can have the screen? Thank you.
24 And could we have Exhibit 42, please?
25 (Brief pause in proceedings.)

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1 BY MS. THORME:
2 Q Was this the letter of --
3 MS. THORME: No, that is the earlier letter.
4 The first page. The first page. Yes, okay.
5 Q So this is -- is this -- so was this the
6 letter that you received, a letter that proposed
7 disciplinary action on January 12th, 2011?
8 A My eyes are not what they used to be. I
9 can't read that --
10 MS. THORME: Can you pop --
11 THE WITNESS: -- from here.
12 MS. THORME: -- up -- no, pop up the date,
13 please?
14 THE WITNESS: Do you have a hard copy I can
15 read from?
16 BY MS. THORME:
17 Q Can you see it now?
18 A That date is January 12th, but I can't
19 read the rest of the letter.
20 Do you have a hard copy I could review
21 or --
22 MS. THORME: Do you have hard copies of all the
23 exhibits?
24 MS. MACEDO: No.
25 ///

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1 BY MS. THORME:
2 **Q So you don't recall when you received**
3 **that?**
4 A Not specifically.
5 MS. THORME: Okay. Can you pop up the
6 signature page for me, please?
7 **Q So this is page 5 of that letter, and**
8 **since Ms. Macedo was testifying that she sent this**
9 **letter, can you tell me whose signature that is on the**
10 **letter?**
11 A Mr. Seta, Sato (phonetic).
12 **Q Okay.**
13 A I don't know.
14 **Q Thank you.**
15 **And did this letter propose to downgrade**
16 **your grade three wastewater treatment plant operator**
17 **certificate to a grade two?**
18 A I don't know. I can't read that letter,
19 so I can't comment on it.
20 **Q You don't remember --**
21 A No.
22 **Q -- what they were proposing?**
23 A No.
24 **Q And what was the result? Did you get a**
25 **letter of reprimand from the State Water Board?**

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1 A The result was that I appealed the
2 downgrade, and I won. They did not downgrade my
3 certificate.
4 **Q Did you receive a letter of reprimand**
5 **from the State Water Board?**
6 A Yes, I did.
7 **Q Okay. And so did they find you liable**
8 **for some violations of the operator certification**
9 **regulations?**
10 A I don't remember the specific language.
11 **Q Okay. And when did you receive this**
12 **subpoena to appear here today?**
13 A I believe it was yesterday or the day
14 before. I'm not sure when.
15 **Q So in relation to the spill event in**
16 **2010, you testified that you closed the influent gates**
17 **as one of the first steps?**
18 A That's correct.
19 **Q And was that to protect the downstream**
20 **processes?**
21 A It was to achieve two different
22 objectives.
23 One was to prevent the wet well from
24 flooding, which unfortunately, that happened anyway.
25 But the other one was also to maintain a sufficient

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1 pool of water for the emergency standby pump to a pond.
2 **Q Okay. And did you take that action**
3 **intentionally?**
4 A Take what action?
5 **Q To close the influent gates?**
6 A Yes.
7 **Q Okay. And did you shut down the storm**
8 **water sumps to the plant?**
9 A No, I did not.
10 **Q Did you tell anyone to shut down the**
11 **storm water sumps? I believe you testified that you**
12 **shut them down so additional water was not coming in**
13 **the head ways earlier.**
14 A I do not recall testifying to that.
15 **Q All right. So do you know whether the**
16 **storm water sumps were shut down to protect the plant?**
17 A At some point they were.
18 **Q Okay. And that was not you that did**
19 **that?**
20 A No, it was not.
21 **Q Okay. And had you ever seen water**
22 **migrate into the headworks at any other occasion**
23 **before, that caused an electrical failure?**
24 A No.
25 **Q Okay. And the day that you said that**

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1 **there was a 13 million-gallon influent into the plant,**
2 **was there a spill that day?**
3 A No.
4 **Q And did you and others divert flows from**
5 **the collection system to the fledge lagoon and fledge**
6 **drying beds to avoid more sewage and storm water being**
7 **spilled?**
8 A We did use the portable six-inch pump to
9 dewater the headworks area after it flooded, so I guess
10 the answer is "yes."
11 **Q And was that done intentionally?**
12 A Yes.
13 **Q And did you and others hook up an**
14 **emergency diesel pump to bypass the nonfunctioning**
15 **influent pumps?**
16 A No.
17 **Q You didn't hook up an emergency diesel**
18 **pump?**
19 A No, I did not.
20 **Q No staff member hooked up an emergency**
21 **diesel pump?**
22 A No, they did not.
23 **Q Okay. And what was the big pump that was**
24 **pumping out the headworks when the inflow pumps failed?**
25 A The emergency standby pump.

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1 **Q Okay. That is not diesel?**
2 A It is diesel.
3 **Q Okay. And was that intentional?**
4 A Was what intentional?
5 **Q Was hooking up the emergency bypass pump**
6 **intentional?**
7 A I didn't hook it up. It was already in
8 place.
9 **Q Okay. So it was ready to go?**
10 A Yes, it was.
11 **Q Okay. And was that done as a precaution**
12 **before the storm?**
13 A Yes.
14 **Q Okay. And did you start up the engine**
15 **before you went to open the bypass valve?**
16 A No, I did not.
17 **Q Did anyone?**
18 A Evidently not, because it was in the
19 closed position when the pump was started.
20 **Q Okay. And I think you testified with**
21 **Ms. Macedo earlier that you had seen the standard**
22 **operating procedures at the plant?**
23 A I saw the standard operating procedures
24 that she presented on the screen here.
25 MS. THORME: Okay. If we can have Exhibit 99,

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1 dash, 2, please.
2 **Q So did you open the valve before you**
3 **started the engine?**
4 A I did not.
5 **Q Okay. And if the treatment plant was**
6 **running normally and wasn't hooked up to the bypass**
7 **plant, would the plant run even though the bypass valve**
8 **was closed?**
9 A I'm not sure I understand your question.
10 Did the plant run --
11 **Q On a normal day, if the bypass valve was**
12 **closed, would the treatment plant run?**
13 A Yes.
14 **Q Was the primary cause of the spill on**
15 **December 19th, 2010, the large accumulation of**
16 **floodwater that caused an electrical pump -- an**
17 **electrical problem that shut down the influent pumps?**
18 A No.
19 **Q What was it?**
20 A The pump failure was due to water
21 migrating to the conduits and caused --
22 THE REPORTER: Could you repeat that, please?
23 Caused a short --
24 THE WITNESS: Caused a dead short in the motor
25 conduits.

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1 BY MS. THORME:
2 **Q Okay. But that was caused by floodwater?**
3 A It was a combination of flooding and
4 sewage.
5 **Q Okay. And was the spill event reported**
6 **to the required agencies within the two-hour time**
7 **frame?**
8 A To the best of my knowledge, yes.
9 **Q Okay. So today you said that you had**
10 **others call those agencies; is that correct?**
11 A That's correct.
12 **Q But in your deposition, you said that you**
13 **made those calls. Which version is correct?**
14 A Aaron Allen made the majority of the
15 calls. I did make a few calls. We were both working
16 on the telephones.
17 **Q Okay. And how much experience do you**
18 **have in estimating sewer spills?**
19 A Well, I have been employed at the
20 District for 20 years, and I have seen a lot of sewage
21 flows. And I'm very familiar with how much a certain
22 quantity of water can represent. And so I would say
23 that while I have never had to calculate a spill amount
24 before, I'm well familiar with volumes of water.
25 **Q Okay. But you have never been involved**

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1 **in another spill-reporting event; is that correct?**
2 A No, I have not.
3 **Q Okay. And your spill estimate was**
4 **between 2.2 and 3 million gallons for the spill; is**
5 **that correct?**
6 A That's correct.
7 **Q Did you formally certify, under penalty**
8 **of perjury, that volume estimate?**
9 A No, I did not.
10 **Q And did the District ever certify final**
11 **spill volume estimates?**
12 A I do not know.
13 **Q Okay. And do you know that the State**
14 **Office of Enforcement did not adopt your spill**
15 **estimate?**
16 A Yes, I know that.
17 **Q And did you know the District and two**
18 **other experts have calculated the event spill volume,**
19 **and none of them came close to your estimate?**
20 A All of the estimates that were presented
21 by the State, as well the District, used hypotheticals,
22 visual estimates and past monikers.
23 My method of estimating, it was the only
24 one that used hard-data facts from the flow meters at
25 the plant. I used numbers from the flow total from

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1 meters. So all of the other ones were hypothetical.
2 Mine was factual.
3 **Q Okay. And are the electrical pull boxes**
4 **at the plant, designed so rainwater or groundwater that**
5 **does enter those boxes, drains to a sump that is pumped**
6 **to be treated?**
7 A I'm sorry, but could you repeat the
8 question?
9 **Q The electrical pull boxes at the plant,**
10 **are they designed so that rainwater and groundwater**
11 **that does enter those boxes, drains to a sump that is**
12 **pumped to be treated?**
13 A I'm not sure. Some of them maybe, but
14 I'm not sure if all of them do.
15 MS. THORME: Okay. No further questions.
16 MS. MACEDO: I have no redirect.
17 MR. YOUNG: Okay. Let see if the board has any
18 questions. We will start at this end.
19 Mr. Jeffries?
20 MR. JEFFRIES: I don't know where to start.
21 MR. YOUNG: At the beginning.
22 MR. JEFFRIES: Okay. The electrical conduit
23 box in question, how far is it from the pumps
24 themselves?
25 THE WITNESS: Well, it's located above grade at

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1 ground level. The pumps themselves are two stories
2 below ground in a pump room, so maybe 14 feet in the
3 line distance.
4 MR. JEFFRIES: And in your experience in the
5 tenure at the agency, have you ever noticed water
6 coming out of those particular conduit pipes in the
7 past?
8 THE WITNESS: I have never noticed water coming
9 out of the particular motor leads that went into the
10 influent pumps. That would have been a very noticeable
11 warning sign for at 3 force 8 power (phonetic).
12 We did have a lot of problems in the past
13 with water intrusions through other penetrations such
14 as piping and electrical conduits and the head ways
15 area.
16 MR. JEFFRIES: Did you or any of the
17 maintenance crew of the agency, replace any wiring
18 within those conduits in question?
19 THE WITNESS: For the influent pumps?
20 MR. JEFFRIES: Yes.
21 THE WITNESS: We did not. We had a local
22 contractor through resources management who did it and
23 actually ran it above ground conductors in a spare
24 piece of conduit because I was not comfortable trying
25 to reenergize the conduits that were in the ground.

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1 MR. YOUNG: But that was after the spill?
2 MR. JEFFRIES: After --
3 THE WITNESS: After.
4 MR. JEFFRIES: No, I'm talking about before the
5 spill?
6 THE WITNESS: No, sir.
7 MR. JEFFRIES: Because the previous testimony
8 by Mr. Thoma or is that --
9 MR. YOUNG: Thoma was the first one.
10 MR. JEFFRIES: Right. He stated that there
11 should have been some kind of plug within those
12 conduits to stop the water from coming into that unit
13 where the pumps were located and to trip the circuit
14 breakers. And I'm just trying to visualize or find out
15 how those conduits were not protected?
16 THE WITNESS: Well, the state of that pull box
17 was very well known. We had been discussing that
18 particular pull box in the general overall plan of the
19 reconductor project for approximately seven or eight
20 years.
21 It was well known that the conduits
22 weren't sealed that led to the pump ground. It was
23 well known that the box had cracks in it, and there was
24 a lot of groundwater that had entered it. The site --
25 didn't work.

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1 THE REPORTER: I'm sorry -- excuse me --
2 THE WITNESS: -- the department --
3 MR. YOUNG: Slow down.
4 THE REPORTER: -- I'm sorry, but could you
5 please slow down?
6 MR. YOUNG: Slow down.
7 THE WITNESS: I'm sorry.
8 MR. YOUNG: Slow down.
9 THE WITNESS: Where was I?
10 THE REPORTER: You said something didn't work.
11 THE WITNESS: Okay. I think I know where I was
12 at.
13 The condition of the pull box was well
14 known to both myself and the staff, to the
15 administrators and the board of directors.
16 We would have annual major budget item
17 meetings where all the major budget items would be
18 talked about, and this was one of the major budget
19 items that was talked about on an annual basis. We had
20 myself and my staff would meet with the administrator
21 staff, and we would impress upon them the importance of
22 these major budget items, so this was discussed
23 annually.
24 MR. JEFFRIES: I -- well, I was trying to
25 determine -- and I realize that because it had been

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<p>1 brought up in budget cycles over the two or three years 2 or maybe longer than that, that there was a major item 3 on the budget to do something with that box. 4 And so subsequently -- and it's obvious 5 to me that there was some minor repairs done to the box 6 by raising the lid because of the water issues getting 7 into the pull box itself. 8 So then the flooding of the pull box, 9 evidently draining of the conduits into the pump rooms, 10 which tripped the trip -- the circuit breakers, which 11 caused the whole issue to start to fail. And, you 12 know, I don't know how you did what you did, quite 13 frankly, just listening to what you presented. 14 But besides that, what I want to know is 15 was this information aware -- where you aware that this 16 pull box -- it was obvious that there was an issue with 17 the pull box, and that is why the lid was raised up 18 above. 19 And why -- you mentioned something 20 earlier in your testimony that there was a change in 21 the area after the earthquake, is that correct, did it 22 sink? 23 THE WITNESS: What happened after the 24 earthquake, we obtained FEMA funds -- the District did. 25 The former flood wall was about two feet high. And</p> <p style="text-align: right;">Page 282</p>	<p>1 building, but they have a sensing capability to sense a 2 short, and that is what tripped the breakers. 3 MR. JEFFRIES: Okay. I have got the picture. 4 Thank you very much. 5 MR. YOUNG: Okay. Just so I'm clear about the 6 seals. 7 Mr. Conan (phonetic) testified that the 8 seals on the conduits should have been put in back in 9 the '60s sometime, and that they were not. 10 And he also said that after construction, 11 after installation, that it would not be easy to see 12 that the seals were no longer -- that they weren't 13 there. 14 Are you saying that the District was 15 aware that the seals were missing? 16 THE WITNESS: Yes, sir. 17 MR. YOUNG: So what Mr. Thoma said earlier, was 18 not accurate? 19 THE WITNESS: That's correct. 20 MR. YOUNG: Okay. Mr. Harris? 21 MR. HARRIS: Prior to the spill, were you ever 22 present when the regional board did their inspections 23 of the plant? 24 THE WITNESS: Yes, I was. 25 MR. HARRIS: Were any of the issues that we</p> <p style="text-align: right;">Page 284</p>
<p>1 FEMA said, We will give you funds because of this 2 damage, but you have to meet it. Meaning the one 3 hundred year flood levels. 4 MR. JEFFRIES: Right. 5 THE WITNESS: So the whole retaining wall 6 around the headworks was tore out. It was re-graded 7 and re-blacktopped. But as a result of the 8 engineering, instead of the water all flowing away from 9 the headworks -- 10 MR. JEFFRIES: It flowed -- 11 THE WITNESS: It -- what they made was a 12 depression around the entire area so we have a puddle 13 anywhere from a foot to two-and-a-half feet deep, that 14 extended out from the headworks and also covered up the 15 pull box and subjected it to flooding. 16 MR. JEFFRIES: Okay. And so those conduits go 17 directly from that pull box into the pump station 18 itself? 19 THE WITNESS: That's correct. 20 MR. JEFFRIES: The conduits filled up with 21 water. The water went into the circuit breakers. The 22 circuit breakers tripped. 23 THE WITNESS: Actually, the water went into the 24 motors themselves where the connections were made, and 25 the circuit breakers are located in a different</p> <p style="text-align: right;">Page 283</p>	<p>1 talked about today, discussed with the regional board 2 staff, or did they point that out to you at the time? 3 THE WITNESS: Well, we talked about a lot of 4 issues today, so I really can't be -- 5 MR. HARRIS: Well, I'm thinking about the 6 susceptibility of the junction box, the pull box to 7 flooding, maybe the condition of the standby -- 8 THE WITNESS: I don't believe we ever brought 9 that to any of the inspectors' attention. 10 MR. HARRIS: Okay. Thank you. 11 MR. YOUNG: Dr. Wolf? 12 DR. WOLF: There was a lot of discussion about 13 the seal -- seals, plural. In addition to 14 moisture-intrusion protection, aren't seals also 15 generally required for a fire protection to prevent 16 propagation of fire within conduits in case of a short? 17 THE WITNESS: Yes, they are. It's called the 18 class one dead one requirement. It has to do with 19 electrical connections that are made within the 20 proximity of an explosive (phonetic) source. 21 DR. WOLF: Correct. And that is why the seal 22 also has to be fire rated by UL? 23 THE WITNESS: That's correct. 24 DR. WOLF: Okay. Thank you. 25 My next question pertains to the</p> <p style="text-align: right;">Page 285</p>

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<p>1 emergency backup pump, which is the pump operated by 2 the diesel engine. And you mentioned that the pump 3 was -- the diesel engine had problems being on and off. 4 Realizing that yourself and your team, as 5 you described earlier, are not electricians nor diesel 6 mechanics, was there a budget to perform maintenance 7 using an outside agency of these diesel engines? 8 THE WITNESS: I don't know if there was a 9 specific budget. But in my role as the plant 10 superintendent, I did have the authority to make 11 repairs up to \$1,000. And anything higher than that 12 would have to be approved by the District 13 administrators or the board of directors. 14 The pump itself, during the time that we 15 were trying to troubleshoot it, didn't require repair 16 costs because we had not purchased it yet. It was 17 still in the purchasing stage. It took about three 18 years of having the pump on-site and having numerous 19 problems with it, having to send it back to the factory 20 several times before we actually accepted it. 21 So the pump was very problematic and even 22 at the time we accepted it, the staff in total made a 23 recommendation to Administrator Wallace that we didn't 24 want the pump. We told him it's a lemon, that we're 25 going to have problems with it.</p> <p style="text-align: right;">Page 286</p>	<p>1 pumps were beyond what small troubleshooting skills you 2 could have gotten from a one- or two-day seminar. They 3 had to send out a factory worker out from Texas for 4 detection to actually figure out what the problem was 5 with that pump on several occasions. It was a very 6 problematic pump. 7 DR. WOLF: Thank you. 8 Did you experience mistripping of the 9 circuit breakers after the events, the coordination 10 study having been performed, prompted by the fact that 11 there was miscoordination between the main circuit 12 breaker and the downstream breakers causing all pumps 13 to fail, actually, rather than only one? 14 Did you experience, in the years you 15 worked for the plant, other problems sometimes with 16 some of the breakers? 17 THE WITNESS: Not really. Breakers were 18 somewhat of a sensitive subject at the plant. The MCC 19 building is where we dealt with a lot of the 20 three-phase, high-voltage electricity, and so we tried 21 to keep up our preventative maintenance on the program 22 on the buses (phonetic) and the breakers. 23 But whenever we noticed something that 24 was out of kilter, especially on the electrical system, 25 we would have it addressed by our certified</p> <p style="text-align: right;">Page 288</p>
<p>1 But the manufacturer offered the District 2 a significant discount, and so we bought the pump at 3 the discount price. 4 DR. WOLF: All right. Was there an extended 5 warranty? 6 THE WITNESS: Yeah, you know -- 7 DR. WOLF: That was -- 8 THE WITNESS: -- I can't remember. 9 DR. WOLF: That was my attempt at humor. 10 Obviously, it didn't go very well. 11 All right. So my next question is in a 12 facility like the water treatment plant, where you have 13 a lot of complex systems, both mechanical and 14 electrical, to keep up with the technology and with the 15 state of the industry in operation and maintenance, was 16 there a budget to have yourself and your team get some 17 training? 18 THE WITNESS: Yes, we did have a budget for 19 membership schools and trainings, and my operators went 20 to numerous classes throughout the years. I would 21 leave it up to them on their particular area of 22 interest. If I have someone really interested in 23 mechanical seals, I'd sent him to one of those classes. 24 So we did have an ample budget for training. 25 However, the problems with the standby</p> <p style="text-align: right;">Page 287</p>	<p>1 electrician. 2 DR. WOLF: So were these breakers -- was there 3 electrical testing performed on these breakers? 4 Earlier in the testimony of Mr. Thoma, he 5 mentioned that he would hire an outside agency to 6 perform the electrical testing of the breakers which, 7 you know, would be a primary injection testing. 8 So when you mentioned maintenance, that 9 was just basically operating the breaker on and off, or 10 was there actually verifying its trip settings? 11 THE WITNESS: Well, that will take a little bit 12 of an explanation. In the past, the board of directors 13 had to authorize a maintenance mechanic's slash 14 electrician position at the plant. And so I had 15 several maintenance mechanics over the years that were 16 also certified electricians that could tighten lugs on 17 breaker boxes and do low testing and things of that 18 sort. 19 But several years ago before the board of 20 directors eliminated that position, and I no longer had 21 certified electricians on the staff, there were certain 22 restrictions that would prevent people who aren't 23 trained in proper electrical procedures from doing work 24 inside of the breaker boxes. And so our maintenance 25 program, we had contracted out over the years to</p> <p style="text-align: right;">Page 289</p>

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<p>1 various electrical contractors.</p> <p>2 But we did have a computerized</p> <p>3 maintenance program that generated work orders on a</p> <p>4 regular basis. Most of those work orders were based</p> <p>5 upon manufacturers' recommendations.</p> <p>6 DR. WOLF: Okay. And my last question is when</p> <p>7 you responded to the emergency and water was coming</p> <p>8 down from the light fixtures and out of the junction</p> <p>9 boxes, I'm sure there was some electrical safety</p> <p>10 concerns associated with your activities.</p> <p>11 THE WITNESS: Is that a question?</p> <p>12 DR. WOLF: Yes, that is a question.</p> <p>13 THE WITNESS: I'm sorry. I didn't understand</p> <p>14 the question.</p> <p>15 DR. WOLF: Okay. Let me rephrase the question.</p> <p>16 When you responded to the emergency in</p> <p>17 the basement, and you saw water coming out of the light</p> <p>18 fixtures and out of the junction boxes, I would assume</p> <p>19 that there was some serious electrical safety hazard</p> <p>20 concern that you had when you were trying to get the</p> <p>21 plant back in operation?</p> <p>22 THE WITNESS: You would be correct.</p> <p>23 DR. WOLF: All right. Thank you.</p> <p>24 MR. YOUNG: Mr. Jordan?</p> <p>25 MR. JORDAN: Thank you, Mr. Chair.</p> <p style="text-align: right;">Page 290</p>	<p>1 MR. JORDAN: In your experience, is that</p> <p>2 something that happens at every treatment plant, some</p> <p>3 type of backup like that, or is there a particular</p> <p>4 reason that you would hard install it for the wet</p> <p>5 season?</p> <p>6 THE WITNESS: Due to the difficulties and the</p> <p>7 length of time it took to actually hard connect it to</p> <p>8 the discharge pipe. It was an hours-long process, and</p> <p>9 such as when we had the spill on the 19th, if we had to</p> <p>10 spend three or four hours hooking the pump up before we</p> <p>11 could even get it running, we felt it was time that was</p> <p>12 going to be wasted while we were trying to deal with in</p> <p>13 an emergency.</p> <p>14 So we felt the better solution was to</p> <p>15 actually put it in place, hard pipe it and have it</p> <p>16 ready to start up and run in case of a spill, in case</p> <p>17 we would lose pump capacity.</p> <p>18 MR. JORDAN: And then earlier you talked about</p> <p>19 the generator. You also had problems with the</p> <p>20 generator, right?</p> <p>21 THE WITNESS: We didn't actually have problems</p> <p>22 with the generator. We had an alarm that the generator</p> <p>23 room was flooded. There was a small flow that sits on</p> <p>24 the floor and as the water level comes up, it activates</p> <p>25 the flow. So there was probably six inches of water in</p> <p style="text-align: right;">Page 292</p>
<p>1 Hello, Mr. Appleton. Probably the</p> <p>2 conditions of your appearance and the subject matter</p> <p>3 aren't very pleasant, so I want to thank you for being</p> <p>4 here today.</p> <p>5 Can you remind -- I think one of the</p> <p>6 questions you answered to District counsel was</p> <p>7 concerning the standby pump and you set that up for</p> <p>8 storm events?</p> <p>9 THE WITNESS: At the beginning of a rainy</p> <p>10 season, we actually -- during the summer months, when</p> <p>11 there was not a heavy chance of rain or wet weather, we</p> <p>12 would store it inside the storage building just to keep</p> <p>13 it out of the saltwater and the atmosphere down there.</p> <p>14 But at the beginning of the fall -- and I</p> <p>15 don't remember exactly when it was. It was somewhere</p> <p>16 around September or so. The pump was pulled out of the</p> <p>17 storage building. It took about three hours to</p> <p>18 physically make the hard connection to the pump.</p> <p>19 So my thought was if we ever had an</p> <p>20 emergency and it took me three hours to get the pump</p> <p>21 hooked up, I would be in deep trouble.</p> <p>22 Anyway, so we hard connected the pipe to</p> <p>23 the pump sometime in September, the middle of September</p> <p>24 and the pump was basically left there through the</p> <p>25 weather -- through the wet-weather season.</p> <p style="text-align: right;">Page 291</p>	<p>1 the generator room.</p> <p>2 But the generator itself is on a pedestal</p> <p>3 and it sits a foot and a half or two feet above the</p> <p>4 floor level, so it was not a major concern for me at</p> <p>5 the time.</p> <p>6 MR. JORDAN: And between the two of them, I</p> <p>7 think you mentioned before and again, in another</p> <p>8 answer, that you had to have a fluid prime the pump.</p> <p>9 Is there not a process that is easy to -- during</p> <p>10 September until whenever that season is, that you have</p> <p>11 the pump hard hooked up and you have the generator</p> <p>12 ready to go, but you're not continually testing those?</p> <p>13 THE WITNESS: We did test -- actually, I want</p> <p>14 to back up and point out one thing.</p> <p>15 The pump has a self-prime function. It</p> <p>16 has the gas-charged cylinder, where it would start to</p> <p>17 prime itself, so it could start pumping. We have had</p> <p>18 problems with that throughout the years too, but it was</p> <p>19 capable of being started to dry and self-priming</p> <p>20 itself.</p> <p>21 As far as running the pump. We did have</p> <p>22 in our preventive work order system, a work order that</p> <p>23 was generated on a regular basis to run the pump, test</p> <p>24 the pump. But due to certain restrictions from local</p> <p>25 air quality, we had a limited amount of time that we</p> <p style="text-align: right;">Page 293</p>

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<p>1 could run the pump. And I don't remember the 2 specifics, but I think the longest that we were able to 3 run the pump I think at one time, was either 10 or 15 4 minutes. 5 MR. JORDAN: Okay. And really more of my 6 question would be, how often did you run it to test 7 that it was working? 8 THE WITNESS: At least monthly. 9 MR. JORDAN: Okay. Thank you. 10 MR. YOUNG: Mr. Johnston? 11 MR. JOHNSTON: Yes. Good afternoon, 12 Mr. Appleton. 13 Okay. So there was testimony that the 14 standard operating procedure for running the diesel 15 bypass pump involved first opening the 12-inch valve 16 and then starting the pump. 17 And you just testified that you would 18 routinely, for brief periods of time, start up the 19 pump, test the operation. When you did that, would you 20 run through that whole procedure, open the valve, start 21 the pump? 22 THE WITNESS: No, sir. The valve, during the 23 time that I was a plant superintendent, was actually 24 locked with a chain and a padlock and left in the open 25 position. I had been on a leave of absence prior to</p> <p style="text-align: right;">Page 294</p>	<p>1 one of those. 2 MR. JOHNSTON: I'm referring to the earlier 3 one. And unless I'm mistaken, the earlier one said 4 when you shut down the pump, you close all 12-inch 5 valves, and when you start up the pump, before you 6 start the pump, you open the discharge valve. 7 THE WITNESS: That's correct. 8 MR. JOHNSTON: So that was the earlier -- so 9 that was the SOP that was in effect at the time of the 10 incident? 11 THE WITNESS: That's correct. 12 MR. JOHNSTON: So my question is, was it simply 13 human error that that SOP was not followed? That 14 instead of opening the valve, and then starting the 15 pump, the sequence was starting the pump and then 16 opening the valve? 17 THE WITNESS: I guess you could say it was 18 human error. I was out there and the man in charge who 19 tried to start the pump -- I had never seen that 20 particular SOP that instructed for that valve to be 21 closed, or I would have stricken it from the record, 22 and I would have corrected it. 23 My previous way of dealing with it 24 where -- the 12 years that I was a plant 25 superintendent, was I had a four-foot section of chain</p> <p style="text-align: right;">Page 296</p>
<p>1 that year, and evidently sometime during my leave of 2 absence, some maintenance work was done on the valve, 3 and it was not placed back in the open position and 4 locked. Whenever it is was through being worked on, 5 the valve was left in a closed position. 6 MR. JOHNSTON: Okay. So it had been locked in 7 the open position before? 8 THE WITNESS: Yes. 9 MR. JOHNSTON: Okay. And so can you explain 10 why? Was it simply a human error that the pump -- when 11 there was an operating procedure of open the valve, 12 start the pump, that what was implemented was in 13 reverse? 14 THE WITNESS: I'm not sure if I understand your 15 question. 16 MR. JOHNSTON: Okay. 17 THE WITNESS: The operating procedure that was 18 in place in October of 2010, was erroneous, because it 19 said to keep the valve in closed position and only open 20 it when you need to run the pump. 21 MR. JOHNSTON: That's correct. 22 THE WITNESS: And then the District later, I 23 think in May of the following year, issued another SOP 24 that said the valve should be in the open position 25 before the pumps are started. I didn't author either</p> <p style="text-align: right;">Page 295</p>	<p>1 and a padlock. And when the work was done, the valve 2 was left in the open position and the chain and padlock 3 were placed on it so it could not be closed. 4 When I went to start the pump, I never 5 thought of opening the valve. I had never seen that 6 SOP that stated to open the valve, so that is kind of 7 what happened. 8 MR. JOHNSTON: Are you testifying that it was 9 your -- your assumption that the valve was already 10 open? 11 THE WITNESS: That's correct. 12 MR. JOHNSTON: Okay. Let's talk about seals 13 for a minute. 14 I understand you had authority to do 15 maintenance work less than a \$1,000. The District put 16 up an exhibit that said ultimately, We're replacing the 17 seal that caused the problem was an 8- or something in 18 the high three figures, 8 or 900 bucks. I don't 19 remember exactly how much. 20 If the -- I understand that there was a 21 \$200,000 -- or approximately -- rewiring project that 22 had been on the books for a while, and that had not 23 been done. 24 But would, if, as you testified, it was 25 known and routinely discussed that there was a lack of</p> <p style="text-align: right;">Page 297</p>

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<p>1 seals in the conduits between the -- that vault and the</p> <p>2 pump room, would it not have been within your</p> <p>3 authority, without a major capital project, to simply</p> <p>4 install the seals?</p> <p>5 THE WITNESS: It would have been within my</p> <p>6 spending authority of the thousand dollars, but the</p> <p>7 project was started in 2004.</p> <p>8 And Administrator Wallace's office was</p> <p>9 one hundred percent responsible for the reconductoring</p> <p>10 (phonetic) the project. They did all the specs. They</p> <p>11 did all of the inspections. Basically it was hands off</p> <p>12 for the operation staff. Administrator Wallace --</p> <p>13 Administrator Wallace's company was totally responsible</p> <p>14 for the reconductoring project.</p> <p>15 MR. JOHNSTON: So are you testifying then that</p> <p>16 you as superintendent didn't do anything about the</p> <p>17 seals because you figured eventually the project would</p> <p>18 get done, and the seals would be taken care of then?</p> <p>19 THE WITNESS: No, that is not my testimony.</p> <p>20 MR. JOHNSTON: I'm just -- then maybe you can</p> <p>21 explain to me a little better.</p> <p>22 THE WITNESS: Sure. My testimony was I had</p> <p>23 informed my direct superior on many previous occasions.</p> <p>24 I sent e-mails with pictures. I spoke to the board of</p> <p>25 directors about it, and I told them of the necessity.</p> <p style="text-align: right;">Page 298</p>	<p>1 MS. THORME: Thoma.</p> <p>2 MR. YOUNG: Thoma.</p> <p>3 MR. JOHNSTON: Pardon me?</p> <p>4 MS. MACEDO: Thoma.</p> <p>5 MR. YOUNG: Thoma.</p> <p>6 MR. JOHNSTON: Thoma, I'm sorry.</p> <p>7 The first witness, Mr. Thoma, testified</p> <p>8 that the reconductoring project just involved replacing</p> <p>9 wires, and then even had those wires been pulled, the</p> <p>10 electrician would not necessarily have -- they would</p> <p>11 have noted that no seals were present, because they</p> <p>12 would have been able to pull the wire through. But</p> <p>13 because they didn't know the routing of the wires, that</p> <p>14 they would not have necessarily known that the seals</p> <p>15 were necessary.</p> <p>16 And your testimony is the first that we</p> <p>17 have heard today that indicates that the District was</p> <p>18 aware of the problem of a lack of seals between the</p> <p>19 vault and the pump room, which, by anybody's account,</p> <p>20 no matter how you sequence the events that led to this,</p> <p>21 is pretty much the critical question, or it appears to</p> <p>22 be.</p> <p>23 So -- but it is your testimony then that</p> <p>24 the -- specifically the discussion had happened with</p> <p>25 Mr. Wallace and with the board, that there was a lack</p> <p style="text-align: right;">Page 300</p>
<p>1 And it's not just an 8- or 900-dollar fix</p> <p>2 on these three conduits. The whole conductor system of</p> <p>3 the plant was in a state of disrepair.</p> <p>4 So it was my viewpoint that this is a</p> <p>5 project that I informed my direct supervisor on a</p> <p>6 regular basis of the critical necessity to have it</p> <p>7 fixed. It had been going on for years, but it was</p> <p>8 above my spending limit. And the actual -- I saw the</p> <p>9 invoices from UC electric to do the reconductoring</p> <p>10 project, to do the headworks area and it was \$38,000.</p> <p>11 It wasn't \$700 or \$800. It was much, much more that</p> <p>12 was involved in this project than just putting in</p> <p>13 sealants.</p> <p>14 And that is why when it was labeled as a</p> <p>15 reconductoring project -- when it was first labeled</p> <p>16 back in 2004, it was an electrical system upgrade, and</p> <p>17 that included pull boxes, seals, conduit. So it wasn't</p> <p>18 really part of the assignment that my direct</p> <p>19 supervisor, Mr. Wallace, had given me. He had made it</p> <p>20 plain and clear that his staff was going to deal with</p> <p>21 it.</p> <p>22 MR. JOHNSTON: Well, I'm particularly</p> <p>23 interested in this question because the budget item</p> <p>24 that we looked at mentioned reconductoring, and the</p> <p>25 first witness, Mr. Thorne (sic) -- was that his name?</p> <p style="text-align: right;">Page 299</p>	<p>1 of seals in those conduits?</p> <p>2 THE WITNESS: Yes, sir.</p> <p>3 MR. JOHNSTON: Okay. Next, perhaps you can</p> <p>4 explain to me this. There has been testimony that the</p> <p>5 reconductoring project was on the major budget items</p> <p>6 list year after year from 2004, 2005 on until the</p> <p>7 incident. And I guess what I -- I don't understand in</p> <p>8 any detail how the budgeting process works in the</p> <p>9 District.</p> <p>10 Would it be normal that there would be</p> <p>11 many more items on the -- that that list was kind of a</p> <p>12 wish list, and that it would be normal that only a</p> <p>13 limited number then would be funded at any given year?</p> <p>14 Or was that a list of urgent items in as many -- you</p> <p>15 know, and most of them -- can you give me some sense of</p> <p>16 that?</p> <p>17 THE WITNESS: Well, my information of the</p> <p>18 budgeting process was myself and my staff members would</p> <p>19 meet around budget time with the administrator and his</p> <p>20 representatives. We would talk about carryover items</p> <p>21 that were left over from the previous year's budget,</p> <p>22 such as reconductoring. And then we would also suggest</p> <p>23 new projects or new pieces of equipment that we thought</p> <p>24 of. And it was during this discussion process, the</p> <p>25 group discussion that a sense of priority about each</p> <p style="text-align: right;">Page 301</p>

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<p>1 individual item could be labeled, so to speak.</p> <p>2 It was an annual topic of discussion, the</p> <p>3 pull boxes. And not just this pull box at the plant,</p> <p>4 but all of the pull boxes at the plant. This isn't the</p> <p>5 only pull box that is in this type of condition that is</p> <p>6 below grade and has the possibility of flooding.</p> <p>7 So every year during the major budgeting</p> <p>8 process, this would be discussed. Typically the board</p> <p>9 of directors would visit the plant around budget time</p> <p>10 and actually have a site visit. We actually took the</p> <p>11 board of directors out into the plant, opened up the</p> <p>12 pull boxes and showed them the bad shape that the</p> <p>13 wiring and the hangars, the groundwater intrusion from</p> <p>14 the cracks of the concrete.</p> <p>15 So both Administrator Wallace, and all of</p> <p>16 the board of directors had at least an annual</p> <p>17 experience to come to the plant -- an annual</p> <p>18 opportunity to come to the plant and view the things on</p> <p>19 the major item list. And this was done almost every</p> <p>20 year with the pull box issue.</p> <p>21 MR. JOHNSTON: Okay. So you refer to it as a</p> <p>22 carryover item. In other words, an item that was in</p> <p>23 the budget that had not been done and would sort of</p> <p>24 flop over to the next year?</p> <p>25 THE WITNESS: That's correct.</p> <p style="text-align: right;">Page 302</p>	<p>1 MR. JOHNSTON: So what you're saying is that</p> <p>2 was actually in each of those budgets an approved -- in</p> <p>3 your understanding at least, it was an approved item.</p> <p>4 It was not just something on the wish list that didn't</p> <p>5 make it to the list of what got done. It was an</p> <p>6 approved item that was not done; is that correct?</p> <p>7 THE WITNESS: That is correct.</p> <p>8 MR. JOHNSTON: Okay. That's helpful.</p> <p>9 Next, the -- you testified that this</p> <p>10 particular pull box, before the plant operation staff</p> <p>11 raised the level of the vault by six inches or so,</p> <p>12 would -- subsequent to the San Simeon earthquake and</p> <p>13 the regrading, that this particular pull box would end</p> <p>14 up at the bottom of a puddle basically, after rain</p> <p>15 events; is that correct?</p> <p>16 THE WITNESS: No, that is not correct.</p> <p>17 MR. JOHNSTON: Okay.</p> <p>18 THE WITNESS: After the San Simeon earthquake</p> <p>19 incident, the flood wall around the headworks was</p> <p>20 rebuilt. The old one demolished. The blacktop was</p> <p>21 ripped out. Ten feet away from the structure, a new</p> <p>22 wall was built and a new base and asphalt was laid</p> <p>23 around the entire headworks structure, which radically</p> <p>24 changed the grading of the area.</p> <p>25 And unfortunately, all the water backed</p> <p style="text-align: right;">Page 304</p>
<p>1 MR. JOHNSTON: And were there a large of number</p> <p>2 of carryover items each year or -- I'm just trying to</p> <p>3 get a sense or if this major projects -- major</p> <p>4 budget -- I don't want to use the wrong term -- major</p> <p>5 budget items on the list was an expansive list from</p> <p>6 which a limited number of projects were selected each</p> <p>7 year, or if it was a list of stuff that really needed</p> <p>8 to be done and virtually all of it got done every year,</p> <p>9 and these pull boxes kept getting pushed back?</p> <p>10 THE WITNESS: I think it was a combination of</p> <p>11 both. I think there were high-priority critical items</p> <p>12 that were included in the list, and then I think there</p> <p>13 were also wish-list items that it would be great if we</p> <p>14 got it someday.</p> <p>15 But the thing about the budget that I</p> <p>16 think is important is that once District staff,</p> <p>17 operation staff and John Wallace's staff came up with a</p> <p>18 list, it was presented to the District board of</p> <p>19 directors, to our local politicians, and they approved</p> <p>20 that budget.</p> <p>21 So in essence, from that point forward,</p> <p>22 when the politicians approved that item, and it was</p> <p>23 published in that year's budget, it is an approved</p> <p>24 item. It is not a wish list. It is an item that needs</p> <p>25 to be done.</p> <p style="text-align: right;">Page 303</p>	<p>1 into the headworks area, rather than having slipped</p> <p>2 away to cite drains. So it was after the San Simeon</p> <p>3 earthquake.</p> <p>4 MR. JOHNSTON: Right. And then so from</p> <p>5 approximately -- and approximately when was it then</p> <p>6 that that work was completed?</p> <p>7 THE WITNESS: I want to say that that was at</p> <p>8 the end of 2006, the first part of 2007, when the new</p> <p>9 flood wall was built.</p> <p>10 And that was when I, very shortly</p> <p>11 thereafter, sent a very detailed memo to administrator</p> <p>12 Wallace, voicing my concerns about the pull box, and</p> <p>13 pointing out that the main motor leads for the influent</p> <p>14 pumps ran through that pull box, and that it was now at</p> <p>15 a low spot where water could enter it. And I think I</p> <p>16 specifically pointed out that this has the possibility</p> <p>17 to cause influent pump failure.</p> <p>18 MR. JOHNSTON: Okay. So there was a three-year</p> <p>19 period then from the time that that project, the</p> <p>20 regrading and the flood wall project was completed</p> <p>21 until this incident, approximately?</p> <p>22 THE WITNESS: Sure.</p> <p>23 MR. JOHNSTON: Give or take. And if I</p> <p>24 understood your testimony correctly, when you had the</p> <p>25 significant rain events during that three-year period,</p> <p style="text-align: right;">Page 305</p>

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<p>1 you would get ponding around the headworks?</p> <p>2 THE WITNESS: That's correct.</p> <p>3 MR. JOHNSTON: And that -- did I understand</p> <p>4 correctly, that when that ponding occurred, that the</p> <p>5 top of the -- of this pull box would be below water?</p> <p>6 THE WITNESS: That's correct.</p> <p>7 MR. JOHNSTON: And now describe to me the top</p> <p>8 of this pull box. It is not a sealed container, I</p> <p>9 understand. Does it have holes in it?</p> <p>10 THE WITNESS: Yes, it does.</p> <p>11 MR. JOHNSTON: So did this pull box ever fill</p> <p>12 up with water?</p> <p>13 THE WITNESS: Yes, it did.</p> <p>14 MR. JOHNSTON: And did the pull box then drain?</p> <p>15 THE WITNESS: It drained through the conduits</p> <p>16 that ran down to the influent pumps. There are four,</p> <p>17 two-inch conduits, and each of those act as a</p> <p>18 passageway for all the water.</p> <p>19 Not only that the box was full with, but</p> <p>20 all the water that kept following on the sides.</p> <p>21 Basically, we have four big straws with water coming</p> <p>22 out and pouring out of them.</p> <p>23 MR. JOHNSTON: Now, I'm not talking about -- I</p> <p>24 want to be clear. I'm not talking about the day of the</p> <p>25 incident. I'm talking -- the three years between this</p> <p style="text-align: right;">Page 306</p>	<p>1 spring of 2007, when it finally dried up, is when we</p> <p>2 raised the box then.</p> <p>3 MR. JOHNSTON: Okay. And during that winter,</p> <p>4 you observed that box filling?</p> <p>5 THE WITNESS: We didn't -- no, we did not see</p> <p>6 the box fill up with water.</p> <p>7 MR. JOHNSTON: Okay.</p> <p>8 THE WITNESS: We did observe that the lid was</p> <p>9 the low spot, and that you could actually see water</p> <p>10 pools around the big holes that led down into where the</p> <p>11 conductor was.</p> <p>12 MR. JOHNSTON: Okay. Finally, could you just</p> <p>13 walk me through the -- and I -- your process for making</p> <p>14 that 2.5 to --</p> <p>15 THE WITNESS: 2.5.</p> <p>16 MR. JOHNSTON: -- the 2.5 to three</p> <p>17 million-gallon estimate?</p> <p>18 THE WITNESS: Absolutely.</p> <p>19 After the spill, I was in contact with</p> <p>20 Mack Keeling (phonetic) of the local water quality, and</p> <p>21 he told me that he wanted me to prepare a spill report,</p> <p>22 and one of the items that he wanted me to include was</p> <p>23 the estimate of the spill amount.</p> <p>24 The way that I approached it was that I</p> <p>25 looked at the plant's flow charts. We have an influent</p> <p style="text-align: right;">Page 308</p>
<p>1 time this grading was completed until the time the</p> <p>2 incident took place --</p> <p>3 THE WITNESS: Well --</p> <p>4 MR. JOHNSTON: -- did that pull box fill up at</p> <p>5 various times during those three years?</p> <p>6 THE WITNESS: We did notice it immediately</p> <p>7 after the headworks construction that it was definitely</p> <p>8 a problem, that the pull box allowed water to enter the</p> <p>9 conduits. And that is why the staff put that concrete</p> <p>10 berm around the lid. We raised it up, so that it was</p> <p>11 no longer the low spot.</p> <p>12 It still was not ideal. It still was not</p> <p>13 high enough to be above a very deep puddle, but it was</p> <p>14 enough that if we were hosing down the blacktop or when</p> <p>15 we had light rain, at least this was not the drain</p> <p>16 spot.</p> <p>17 MR. JOHNSTON: How much time elapsed between</p> <p>18 when the regrading was finished with the flood wall,</p> <p>19 and when you raised the box?</p> <p>20 THE WITNESS: That, I don't remember. I</p> <p>21 believe that -- and this is an estimate on time. I</p> <p>22 believe the headworks construction was finished -- the</p> <p>23 headworks construction wall was finished in 2006.</p> <p>24 We noticed problems with ponding during</p> <p>25 the rainy season of 2006, 2007, and I think in the</p> <p style="text-align: right;">Page 307</p>	<p>1 flow meter, which measures how much water is coming</p> <p>2 into the plant. And we also have the effluent flow</p> <p>3 meter, which measures how much water is leaving the</p> <p>4 plant.</p> <p>5 The day of the spill, the influent meter</p> <p>6 failed at approximately 10:00. Our last known flow</p> <p>7 rate was 8.4 million gallons per day. So --</p> <p>8 MR. JOHNSTON: And that is influent?</p> <p>9 THE WITNESS: That is influent.</p> <p>10 Our effluent flow meter continued to work</p> <p>11 throughout the day. That was located in a different</p> <p>12 part of the plant at a different location. So we knew</p> <p>13 specifically how much water we were discharging</p> <p>14 throughout our outfall line.</p> <p>15 I knew that the flow rate never fell</p> <p>16 below 8.4 million gallons per day during the flooding</p> <p>17 period. The rainfall was immense. We were flooding</p> <p>18 out of manholes.</p> <p>19 So using 8.4 as a minimum flow rate, I</p> <p>20 calculated how much water was coming in, versus how</p> <p>21 much water we were pumping out. We had effluent data.</p> <p>22 The difference is the amount of the</p> <p>23 spill. If you know how much is coming in, and you know</p> <p>24 how much you're pumping out, anything that is left over</p> <p>25 has to go someplace. And that was the amount that</p> <p style="text-align: right;">Page 309</p>

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<p>1 exited through the manhole lids, through the 2 clean-outs, through the headwork structure, any place 3 that it could. That is how the spill happened. 4 That was with an estimated flow rate of 5 8.4 million gallons per day, our last verified flow 6 rate. That is assuming that the flow rate never 7 changed after that. That it had never increased. But 8 a more realistic flow curve would have a peak flow rate 9 of probably closer to 10 million gallons per day. 10 So using those two numbers of how much 11 was coming in and how much was going out at the two 12 different flow rates, I came up with a range for my 13 spill calculation. My range was 2.25 million gallons 14 per day, if the flow rate never exceeded 8.4 million 15 gallons. 16 If the flow rate had indeed increased to 17 somewhere to around 10 million gallons a day, then the 18 spill amount would have been closer to 3 million 19 gallons. 20 MR. JOHNSTON: All right. And did you take 21 into account in those calculations, the 880 thousand 22 gallons -- I think I'm getting that number right -- 23 that was pumped out to other parts of the plant and 24 ultimately processed? 25 THE WITNESS: Well, there are two items there.</p> <p style="text-align: right;">Page 310</p>	<p>1 THE WITNESS: (Nodding.) 2 DR. WOLF: And then removing the blacktop and 3 then repaving. Someone must -- obviously this must 4 have been done with design drawings to design the 5 construction of the new retaining wall, rebars for 6 concrete, the grading. So who was responsible for that 7 design? 8 THE WITNESS: I do believe John Wallace's firm 9 made those designs. I'm not exactly sure about that 10 though. I do know that his company performed the 11 construction management, and were the onsite inspectors 12 while all the construction was being done. 13 DR. WOLF: So it would have been the District's 14 responsibility of assuring the -- assuring the proper 15 design and new construction probably done by an outside 16 contractor, in terms of pulling the concrete and the 17 asphalt. 18 So it was the District's responsibility 19 to look at the finished product and looking at the 20 grading and the -- making sure that these upgrades were 21 not having unintended consequence of causing other 22 problems, meaning the puddling of the water? 23 MR. YOUNG: Is that a question, Dr. Wolf? 24 DR. WOLF: Yes. It is a long question, but it 25 is a question.</p> <p style="text-align: right;">Page 312</p>
<p>1 In part of the process, the sewage was pumped into the 2 holding area out in the lagoon, and it stayed there for 3 the month that I was there. We never pumped it back to 4 the plant. 5 But the hundred thousand gallons that was 6 pumped out or whatever amount, it does not really 7 matter, because we have a known flow rate. We have an 8 influent flow meter that works that measures up to 8.4 9 million gallons and then it fails. 10 So we can just say it never got higher 11 than that. Although we know it did. Let's just say it 12 stayed at 8.4 million gallons. We started to pump it 13 again at 10:00 at night. The difference between those 14 two time periods equals 2.25 million gallons of 15 spilling. 16 MR. JOHNSTON: Thank you. 17 MR. YOUNG: Do you have one last question, 18 Dr. Wolf? 19 DR. WOLF: Yes. When in 2006 the regrading 20 work was done to raise the walls after the earthquake, 21 and there was some concrete work done, there was the 22 demolishing of the existing concrete and putting -- 23 raising it up. I forgot how many feet you mentioned. 24 I think it was -- was it four feet or something like 25 that?</p> <p style="text-align: right;">Page 311</p>	<p>1 THE WITNESS: I'm assuming I missed something 2 in the translation there -- 3 DR. WOLF: I -- 4 THE WITNESS: -- but I do not think it is the 5 District's responsibility to make sure that the plans 6 were right. That is the engineering company who 7 produced the plans, and the engineering company who did 8 the plant or the construction management. 9 The District as an entity or myself as a 10 wastewater treatment plant operator, are not mechanical 11 engineers or any engineers that would be able to review 12 plans and things like that and make a judgment call. 13 That is up to the contractors who did that work. 14 DR. WOLF: All right. So to -- I think I'm 15 beginning to understand the picture. 16 So basically in this instance, the design 17 was performed by the Wallace group, and the Wallace 18 group also was the -- and is, the administrator of the 19 District; is that correct? 20 THE WITNESS: That's correct. 21 DR. WOLF: So he serves these two functions? 22 THE WITNESS: That's correct. 23 DR. WOLF: All right. Sorry for my long 24 question. Thank you. 25 MR. YOUNG: Okay. I think we're done with this</p> <p style="text-align: right;">Page 313</p>

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<p>1 witness.</p> <p>2 Mr. Appleton, thank you very much for</p> <p>3 appearing today.</p> <p>4 Okay. Your next witness. Is this your</p> <p>5 final witness?</p> <p>6 MS. MACEDO: This is the final witness.</p> <p>7 MR. YOUNG: Okay. At this juncture, I believe</p> <p>8 you have 55 minutes.</p> <p>9 MS. MACEDO: We're going to make it.</p> <p>10 MR. YOUNG: And the District has 67 minutes.</p> <p>11</p> <p>12 DIRECT EXAMINATION</p> <p>13 THE WITNESS: Good afternoon.</p> <p>14 MR. YOUNG: And your name, please.</p> <p>15 THE WITNESS: My name is Matthew Buffleben. I</p> <p>16 reside in Sacramento, California, and today I'm going</p> <p>17 to present discharge volumes, and I'm going to go over</p> <p>18 the methods and results.</p> <p>19 So I've gone through quite a bit of</p> <p>20 detail. I will try to run through it relatively fast.</p> <p>21 You seem to be fairly knowledgeable, but you could ask</p> <p>22 me questions during or afterwards, if you want to. You</p> <p>23 will see specific items involving graphs and charts I</p> <p>24 will show you.</p> <p>25 MR. YOUNG: So are you a State Water Board</p> <p style="text-align: right;">Page 314</p>	<p>1 Basically to go about this, you know how long the spill</p> <p>2 lasted, the time of duration. And you know how much</p> <p>3 flow was coming out of your discharge point. You can</p> <p>4 estimate the volume.</p> <p>5 So estimating the flow, if you don't have</p> <p>6 a flow meter at those discharge points, which you</p> <p>7 usually don't, you can use photos or charts to get an</p> <p>8 estimate of the flow or you can use tables out of the</p> <p>9 manholes so you can measure the height of the manhole.</p> <p>10 And at the end of the story, the District ended up with</p> <p>11 their method of duration of flow at 417,000 gallons.</p> <p>12 So this is a chart, a flowchart, and I</p> <p>13 will go through this step by step a little bit. It's</p> <p>14 what is part of a method that is published by ACWEA.</p> <p>15 And so this upper left, this manhole, you can barely</p> <p>16 see any water come out of it. It's five gallons per</p> <p>17 minute.</p> <p>18 Probably the only reason you could</p> <p>19 clearly notice that there is any flow coming out of</p> <p>20 this manhole is during the daytime, it's bright and</p> <p>21 sunny, and you could see some water coming onto the</p> <p>22 pavement.</p> <p>23 I would like you to keep in mind that</p> <p>24 December 19th was a much different event. It was wet</p> <p>25 and it was rainy. It was flooding a lot. And occurred</p> <p style="text-align: right;">Page 316</p>
<p>1 employee?</p> <p>2 THE WITNESS: Yes. I'm sorry. I'm a State</p> <p>3 Water Resource -- I'm a Senior Water Resource Engineer</p> <p>4 at the Office of Enforcements, and I'm a supervisor in</p> <p>5 that unit.</p> <p>6 MR. YOUNG: Okay.</p> <p>7 THE WITNESS: Okay. So discharge methods and</p> <p>8 results.</p> <p>9 So estimating a spill volume. Spill</p> <p>10 volume, as we kind of alluded to earlier, can be</p> <p>11 estimated by various approaches. And the circumstances</p> <p>12 of the spill will dictate which approach and which</p> <p>13 method is the most appropriate.</p> <p>14 Now, there are multiple methods that may</p> <p>15 be used and there are different variations for each</p> <p>16 approach. So as an engineer, I'd like to actually</p> <p>17 approach the problems from multiple methods.</p> <p>18 But here we have two different</p> <p>19 approaches, two general approaches, and with widely</p> <p>20 different estimates. So I'm going to take you through</p> <p>21 those approaches today, and afterwards you will be able</p> <p>22 to see that the District's approach was unreliable and</p> <p>23 underestimated the flow, in our conclusions.</p> <p>24 So the District's preferred method of</p> <p>25 approach is called the duration of flow method.</p> <p style="text-align: right;">Page 315</p>	<p>1 into the evening, so there is a lot of factors about</p> <p>2 doing these visual observations.</p> <p>3 So the next slide over you have a pit</p> <p>4 hole flow. In this case it's -- the flow meter here</p> <p>5 was a calibrated gauge, and so this was at 25 gallons</p> <p>6 per minute. So the flow is coming out of pit holes and</p> <p>7 the manhole, and you can see the flow rate. You can</p> <p>8 see the break coming out of the manholes there.</p> <p>9 And as we move over to the top right</p> <p>10 here, you can see the flow starting to come around the</p> <p>11 edge of the manhole. It's about 50 gallons of</p> <p>12 flow -- the flow is about 50 gallons per minute. And</p> <p>13 you can see water coming around the circumference of</p> <p>14 the manhole. So as it progressed, they increased the</p> <p>15 flow rate from 100, and then 150, 200, 225, 250 and</p> <p>16 then 275.</p> <p>17 So I also wanted to mention that even</p> <p>18 though the photos in this chart is the maximum here of</p> <p>19 275, that is not the maximum out of flow -- out of the</p> <p>20 manhole. And that is probably what the District would</p> <p>21 like you to believe in their calculation, but that is</p> <p>22 not the case.</p> <p>23 So the other method --</p> <p>24 MR. YOUNG: Before you continue --</p> <p>25 THE WITNESS: Yes.</p> <p style="text-align: right;">Page 317</p>

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<p>1 MR. YOUNG: -- I just want to know, is this an 2 exhibit? 3 MS. MACEDO: Yes, it's number -- 4 MR. YOUNG: What -- 5 THE WITNESS: Yeah, so CWE methods -- 6 MR. YOUNG: No, which exhibit would it be? 7 MS. MACEDO: I'm getting it for you. 8 THE WITNESS: It's Exhibit -- it starts on 6 -- 9 page number 6, dash 148. 10 MR. YOUNG: So it's Exhibit 6? 11 MS. MACEDO: Yes. 12 THE WITNESS: Yes. 13 MR. YOUNG: All right. I just wanted to make 14 sure. 15 THE WITNESS: So to continue on. 16 So another way, if you don't have the 17 photos in front of you, you could measure the height of 18 the spray coming out of the manhole. So right here is 19 a manhole, and the lid is lifted up a little bit. And 20 so if you measure this height, you can estimate the 21 volume by going over to this table here. 22 I know it's too small to read. But it's 23 the height from the volume in inches, and you can look 24 to find the corresponding flow rate. So measuring the 25 heights of the spray coming out from the manhole, you</p> <p style="text-align: right;">Page 318</p>	<p>1 down to zero. 2 Just to explain the scale and time, this 3 is just over a 24-hour period and on the left-hand 4 side, it goes from zero to MGD (phonetic). 5 So during the afternoon, as the District 6 was successful and getting more pumps and working out 7 the problems, getting a diesel generator, the flows 8 increase out towards the plant and reaches a maximum 9 amount of a little over 8.5, I believe around 10 10 o'clock that evening. 11 Also, we will talk about -- a little bit 12 about the problems with the emergency diesel pump. And 13 these spikes, these are likely dips and indications 14 when they had to stop and restart the pump, and that is 15 why I think it's so spiky here (indicating). 16 So to calculate the flow through this 17 period, first of all, we have to kind of look through 18 the dry-weather flow. Now, the dry-weather flow 19 generally has very little variation. It kind of gives 20 us a base flow through the system. So when we look at 21 this (indicating), we picked August and four Sundays in 22 August to see what happened on a typical Sunday, 23 without influence of rain and wet weather. 24 So here we have the chart, and it has one 25 peak around noon. And I think that is just under 5</p> <p style="text-align: right;">Page 320</p>
<p>1 can get an estimate. 2 So the prosecution's preferred method is 3 to calculate the spill volume. And it is called the 4 pump station method -- the pump station data method. 5 When available, you use recorded flow 6 data. And basically what you do is you record a normal 7 flow day to a spill day. And the spill volume is just 8 the difference between the two. What is the normal 9 operations, versus what happened on the spill. 10 And our final calculations give you a 11 number that cut to the chase. It's just over one 12 million, one hundred thousand gallons. 13 So as we remember, December 19th, 2010, 14 was not a normal day operation-wise. The day before 15 had nearly three inches of rain, and there is flooding 16 in and around the treatment plant. 17 So how do we go about estimating the 18 spill volume? 19 This is the data of an effluent chart 20 from the plant. So this is the meter that was working 21 throughout the storm event. And you can see in the 22 morning, the flow starts increasing out of the plant 23 and peaks right up here at 8.4 at 10:26, and it 24 suddenly drops off. This is the evidence that we have 25 from the time the pump shut off and drops precipitously</p> <p style="text-align: right;">Page 319</p>	<p>1 MGD, and then it has another little peak later around 2 9:00, just under 4 MGD. But it's pretty regular that 3 we can use this graph-based on the effluent meter data 4 and the days that we average to help us determine the 5 volume of the flow event. 6 So wet weather. We have storm weather. 7 We have rain, and we have inflow and infiltration into 8 the pipe system and the sanitary sewer system. 9 So inflow refers to water getting 10 directly into the sewer system. So we have the manhole 11 covers, and we have the pit holes within the manhole 12 covers. And so that is how the water gets into the 13 system directly. And possible nutrients (phonetic) is 14 another common source of inflow into the system. 15 But we also have infiltration, and this 16 is basically deep pipes. That is when the sanitary 17 sewer system gets older and older, and the pipes get 18 cracked and broken. You have intrusion, and so you 19 have additional ways and pathways of water getting into 20 your sanitary sewer system. So that is when we have a 21 storm event, you will have a much greater flow during 22 these storm events. 23 I should also mention that one of the 24 reasons why the pipes crack is earthquakes, and those 25 things can cause damage to the system, too.</p> <p style="text-align: right;">Page 321</p>

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<p>1 So this is a hydrograph. I picked this 2 from the exhibit from the cross -- from the District. 3 And I chose this one because it starts around when the 4 rain starts to fall pretty close to early in the day. 5 And these bars are rainfall intensity. That is on the 6 right-hand side here (indicating). 7 And the blue line is the flow. The flow, 8 that is only due to the water, what is called rain day 9 I and I -- rain day I and I. 10 So if you look at this chart, you can see 11 that the rain peaks around 3:00 here. And then the 12 corresponding peak happens about 6 hours -- 5, 6 hours 13 later about 9:00, and then it peaks about 3 MGD. 14 And so this is a height graph, and this is what we do 15 and we use to look at rain events. 16 So now back to our problem of trying to 17 estimate what is this curve. We know the plant fails. 18 We're trying to estimate a volume on this top part of 19 the graph and come up with a reasonable estimate that 20 you can rely on in a finding. 21 So we have the red line, which once again 22 represents the effluent out of the plant, and we have 23 the blue line here that represents dry-weather flow. 24 So before the pump failed, we can 25 actually get a good idea of what that I and I in the</p> <p style="text-align: right;">Page 322</p>	<p>1 dry flow and the wet flow together, we come up with a, 2 what we feel is a reasonable amount of what should have 3 gone through the plant during the storm day. And that 4 is this green line on top of the graph. 5 Now, Jeff Appleton, he mentioned his 6 calculation was 8.4, so he just basically drew a 7 straight line from 8.4 to calculate the volume and the 8 duration of the event. And he felt that it was more 9 reasonable that it got up to over 10 MGA to calculate 10 the volume from there. 11 We didn't use that method. We thought 12 that the variations with the dry overflow would be 13 appropriate and reasonable amount. We didn't choose 14 the maximum amount to estimate the volume of the spill. 15 So I'm going to back up just a second 16 here. So to calculate the spill volume, what I said 17 before, what would happen on a normal operation of the 18 plant and that is the green line. And then what was 19 actually measured going through the plant. 20 So we subtract the red line during the 21 spill event from the green line, to come up with what 22 the spill volume is or estimate it is. So we get this 23 curve that looks like this (indicating). 24 And so you could see the pump failed at 25 10:26, and then it decreases the flow rates throughout</p> <p style="text-align: right;">Page 324</p>
<p>1 system is, and you will see what that is doing. In 2 this case, we're just going to subtract the blue line 3 from the red line. 4 So this is what we get. We get this 5 purple line. So this is what we calculated in 6 developing our estimate. And you can see the purple 7 line increase and that is the storm. And as the day 8 progresses, it is going up and up, and then the pumps 9 fail. So we have to decide what we're going to do at 10 this point. 11 And for our calculations, we decided to 12 hold the line constant for the rest of the day that we 13 calculated the volume flow. 14 Now, the reasons we did this -- Jeff 15 Appleton just spoke to this -- pumps didn't fail at the 16 peak. So we think we underestimated the flow, 17 especially at the first -- in the beginning of the few 18 several hours. And the second reason that we held a 19 constant for so long a period is because that there was 20 flooding in the area. 21 And flooding is actually going to 22 increase the I and I. It's not a typical rain-day 23 storm event. So those were the two reasons why we kept 24 that line horizontal for the rest of our calculations. 25 So adding those two lines together, the</p> <p style="text-align: right;">Page 323</p>	<p>1 the day and into the evening. And so eventually it 2 goes down to zero. 3 So I'm now going to throw some numbers 4 out to you. We have some decisions to make about how 5 long we calculate the spill event for and what time 6 periods. 7 And so we look at the District's evidence 8 and at eyewitness accounts and testimony to try to 9 figure out what is a reasonable time frame. So we 10 actually looked at what a ten-hour event would -- the 11 spill volume would be. And what an 11-hour event would 12 be from -- 13 MS. THORME: Can I ask what exhibits these are 14 in, because we have never seen these documents before. 15 MS. MACEDO: These were just created for the 16 power -- these were just created for the PowerPoint. 17 THE WITNESS: Yes. And these are all data that 18 was provided by the District or that we had provided as 19 our exhibits. 20 MR. YOUNG: And so this information is already 21 contained in one of your exhibits? 22 MS. MACEDO: Yes. 23 THE WITNESS: Yes. 24 MS. MACEDO: Yes. 25 MR. YOUNG: Which one?</p> <p style="text-align: right;">Page 325</p>

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<p>1 THE WITNESS: It is in our --</p> <p>2 MS. MACEDO: XL.</p> <p>3 THE WITNESS: -- XL spreadsheets. It should be</p> <p>4 3 and 4.</p> <p>5 MR. YOUNG: Okay. So this is just a</p> <p>6 representation?</p> <p>7 MS. MACEDO: Yes.</p> <p>8 THE WITNESS: Yes. I can pull up the</p> <p>9 spreadsheets, but they are not very nice to look at.</p> <p>10 MR. YOUNG: Okay.</p> <p>11 THE WITNESS: So here is our line. This is our</p> <p>12 calculated amount of what would have gone through the</p> <p>13 treatment plant for that time period. This is what was</p> <p>14 measured going through the plant. So we subtracted</p> <p>15 those two volumes. And then plus, we give them</p> <p>16 additional credit for diverting some of the volume to</p> <p>17 the storage, and the District had indicated that to be</p> <p>18 about 100,000 gallons.</p> <p>19 So looking at these three different time</p> <p>20 periods for a ten-hour event, is just under a million</p> <p>21 gallons and for an 11-hour event, you've got 1.3</p> <p>22 million gallons.</p> <p>23 THE REPORTER: Excuse me, but could you please</p> <p>24 slow down.</p> <p>25 THE WITNESS: Sorry.</p> <p style="text-align: right;">Page 326</p>	<p>1 the spill. And I want to cover a little bit about the</p> <p>2 durational flow method, and why we find it so</p> <p>3 unreliable and inconsistent.</p> <p>4 A number of other reasons is there is an</p> <p>5 inherent difficulty with this method because you have</p> <p>6 to really understand the discharge points, the number</p> <p>7 of manholes, the residences, where there is sewage</p> <p>8 coming out of. The flow rates that they used are</p> <p>9 highly suspect because there was manhole evidence that</p> <p>10 was pretty speculative, and there was -- we believe</p> <p>11 they were self-serving conclusions regarding the flow</p> <p>12 out of the manhole.</p> <p>13 In addition to this method, it didn't</p> <p>14 include the storm water in the plant, which under the</p> <p>15 permit, the treatment plant was also supposed to treat</p> <p>16 the storm water.</p> <p>17 So the manhole survey. So we have a lot</p> <p>18 of discharge points. So I think 21 or so is reported</p> <p>19 in sea waste. So ideally for each manhole, you would</p> <p>20 have somebody there that would be looking at the flow.</p> <p>21 How much the flow is and how much is coming out of the</p> <p>22 manhole, and the time frame for what was coming in and</p> <p>23 out of the manholes.</p> <p>24 Now, the District had very limited</p> <p>25 operations of the manholes. So what they end up doing</p> <p style="text-align: right;">Page 328</p>
<p>1 So for a ten-hour event, that is from</p> <p>2 12:00 noon to 10:00, you get just about a million</p> <p>3 gallons. For an 11-hour event, from 11:00 to 12:00,</p> <p>4 you get about 1.3 million gallons. And for a 12-hour</p> <p>5 event, from say, 11:00 to 11:00, it only increases just</p> <p>6 a little bit just adding that extra hour into it, it's</p> <p>7 just over 1.3 million gallons.</p> <p>8 So this is where we have another decision</p> <p>9 point in trying to figure out what our calculated</p> <p>10 volume is.</p> <p>11 So in this case, we thought, based on the</p> <p>12 District's testimony, that the pumps failed at 10:26.</p> <p>13 And the District estimated that the sewage -- the</p> <p>14 overflow, there's an additional capacity within the</p> <p>15 system, so that the spill probably didn't start until</p> <p>16 about 11:00 a.m. in the morning. But we decided we</p> <p>17 would be conservative in our estimate and calculated</p> <p>18 the volume from 12:00 p.m. to 10:00 p.m.</p> <p>19 But noticing that there was such a big</p> <p>20 difference between the 10 and 11 hours, we actually</p> <p>21 used an averaging technique, and so that middle column</p> <p>22 in the middle are the lines that you see in the</p> <p>23 technical reports and in the ACL come up with a final</p> <p>24 volume of 1.1 million gallons.</p> <p>25 So moving on, that is how we calculated</p> <p style="text-align: right;">Page 327</p>	<p>1 is they conducted a manhole survey after the flood and</p> <p>2 spillover.</p> <p>3 So to just orient yourself, I am going to</p> <p>4 use some different terms here now. And so pit hole</p> <p>5 flow, which was an example from discharge about 25 GPM</p> <p>6 and then I will talk a little bit about annular lifted</p> <p>7 flows, which is these overflows.</p> <p>8 So what the District does, is they went</p> <p>9 around and took photos of all the manholes they think</p> <p>10 had this discharge. So this manhole is S2A. That is</p> <p>11 on the Oceano Collection System District and is located</p> <p>12 on Aloha Place at Security Court.</p> <p>13 And so it was assessed to see if there</p> <p>14 was a pit hole flow or annular flow. So what the</p> <p>15 District looked at is how much dirt, grime was coming</p> <p>16 around the circumference. How much cleaning was done,</p> <p>17 and also indicated how many pit holes there were to try</p> <p>18 to get an understanding of what type of flows were</p> <p>19 coming out of the manholes.</p> <p>20 And so in this case from the flow from</p> <p>21 this manhole, they estimated it was about 65 gallons</p> <p>22 per minute from the key period of 11:00 a.m. to</p> <p>23 7:00 p.m.</p> <p>24 So they looked at the other manholes, and</p> <p>25 this was one that we think they got wrong about what</p> <p style="text-align: right;">Page 329</p>

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<p>1 type of flow was coming out of this manhole. This was 2 GD4. And originally they notice that there is two pit 3 hole flows. So they just indicated that the pit hole 4 flow out of this manhole, and they estimated the flow 5 from the key period from 11:00 to 5:00 -- 11:00 a.m. to 6 5:00 p.m., which is 15 gallons per minute. 7 And even still -- but if you take a 8 closer look at the photo, half of the rim on this case 9 was clean. And so for some reason, they decided to go 10 with a pit hole flow, even though there were 11 indications that there was a large flow that came out 12 of this manhole. 13 In another instance, this is actually a 14 clean-out on the Oceano system. That is clean-out S2B 15 on Security Court. So when the District did their 16 survey a couple of days later, they noticed the cap was 17 not in place. And they talked to one of the residents, 18 and they said the cap was in place during the spill 19 event. 20 While, I'm going to look at this a little 21 bit later at the video evidence, but we have another 22 resident that -- well, actually, Steve, who had talked 23 earlier this morning, that said this manholes was 24 discharging both the cap and -- 25 MS. THORME: Objection; that is hearsay</p> <p style="text-align: right;">Page 330</p>	<p>1 MS. MACEDO: -- he makes it -- he interviews 2 people in the regular course of his business, and it 3 was at or near the time of conducting that interview. 4 MR. YOUNG: I understand, but what he is 5 recording in there are statements made to him by 6 others. 7 MS. MACEDO: Right. 8 MR. YOUNG: Why wouldn't those be hearsay? 9 MS. MACEDO: Those are hearsay. And then 10 people come and corroborate them, so -- 11 MS. THORME: That's hearsay. 12 MS. MACEDO: -- that is the best we can do. 13 MS. THORME: Our objection is that those people 14 could have been brought in as witnesses, and we would 15 be able to cross-examine and ask questions of them, and 16 they were not. And so any of those statements are 17 hearsay and cannot be considered as evidence in this 18 matter. 19 MR. YOUNG: I guess they can't be considered as 20 evidence to prove the finding that they might be used 21 for. But hearsay is admissible, as long as it explains 22 or is supplemented under testimony. 23 MS. MACEDO: Right -- 24 MR. YOUNG: I'm trying to -- 25 MS. MACEDO: -- it can't --</p> <p style="text-align: right;">Page 332</p>
<p>1 evidence. 2 THE WITNESS: We have an exhibit that is also 3 included as part of our -- that list Steve Ervins' 4 (phonetic) testimony to this, and that is Exhibit 2. 5 MS. THORME: Okay. That is also hearsay. 6 MR. YOUNG: Do you have any kind of a report 7 that was filed as part of the agency business where 8 this information was put into? 9 MS. MACEDO: Yeah. Exhibit 103 is the chart 10 that Jim Fischer had prepared in the course of his 11 business. And it was submitted, and it has been 12 declared hearsay. 13 MR. YOUNG: Right. 14 MS. MACEDO: But it was prepared as -- after he 15 conducted interviews with all the residents and so to 16 the extent that he is available for cross-examination, 17 about what the residents said, he summarized what they 18 told him and put it into the record. I can't recall -- 19 even if -- 20 MR. YOUNG: Well, what we're perplexed about is 21 the record itself seems to have an exception -- 22 MS. MACEDO: Right. 23 MR. YOUNG: -- as a government document? 24 MS. MACEDO: Right. He makes -- 25 MR. YOUNG: So that --</p> <p style="text-align: right;">Page 331</p>	<p>1 MR. YOUNG: -- look for the other testimony. 2 MS. MACEDO: No, but if it is being used to 3 show why the prosecution team chose a factor of five 4 for the harm, then evidence -- then Exhibit 103 is not 5 being offered for the truth of the matter asserted. 6 MR. YOUNG: Any thoughts? 7 MS. MACEDO: So Exhibit 103 can come in as a 8 business record, but notwithstanding the fact that 9 public residents are coming in and describing their 10 health concerns, because that is not evidence. I 11 understand that. 12 But if those statements are not being 13 offered for the truth of the matter asserted, but as 14 evidence for why the prosecution team considered the 15 selection of the factor of five -- 16 MS. JAHR: They are using it to the truth of 17 the matter asserted. 18 MS. MACEDO: No. I mean, I'm bolstering it 19 for -- this is why we -- we were involved in the 20 conversations. 21 MS. JAHR: Okay. 22 MS. MACEDO: And we -- we found that the 23 beneficial uses were affected for the following 24 reasons. You don't have to agree with the 25 conversations. You have to agree with whether our</p> <p style="text-align: right;">Page 333</p>

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1 recommendation of five is accurate or not.
2 MR. YOUNG: I need to take a look at Exhibit
3 103.
4 MS. MACEDO: No problem. Do you want me to
5 bring it up?
6 (Brief pause in proceedings.)
7 MS. JAHR: I have it right here.
8 (Discussion held off the record.)
9 MR. YOUNG: Let's go back on the record.
10 We're just trying to figure out how long
11 we're going to go and whether we will take a dinner
12 break, or whether when we complete deliberations
13 tonight. It's kind of a logistical thing. We're not
14 quite sure.
15 And at a minimum, I would like to finish
16 all of the witnesses' testimony, and see what time it
17 is. And if it is too late, we might stop, and the
18 board will have to deliberate at a later point in time.
19 If we have enough time, then the board will go into a
20 closed session and deliberate.
21 Most of us are willing to spend most of
22 the night to get that finished, so we just need to see
23 what happens.
24 I do have a couple of housekeeping items.
25 I do have a testimony card from Mr. Nichols, and he is

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1 the board chairman of the Sanitary (sic) District.
2 MS. MACEDO: Sanitation District.
3 MR. YOUNG: Sanitation District. Not sanitary?
4 Sanitation.
5 Okay. And I'm not going to let him
6 testify as a public comment speaker, and the reason is
7 he's the head of the District. He's got inside
8 information. I'm concerned he may say things that
9 inadvertently contradict what other witnesses have
10 said. And it's going to be difficult for the other
11 side if they can't cross-examine him. And it just
12 makes it clean if he just does not testify.
13 If he wanted to testify as a witness,
14 that would be different. Then he could testify that
15 way, but not as a member of the public. So he is going
16 to be excluded as a witness.
17 Now, as to the document that we have got,
18 Jessica, this was document 103.
19 MS. JAHR: It's 103, yes.
20 MR. YOUNG: So here's --
21 MR. JOHNSTON: Is it this one (indicating)?
22 MR. YOUNG: No.
23 MS. JAHR: No. Sorry, 103 is not quite -- it's
24 a spreadsheet type document.
25 MR. YOUNG: This -- let's put it on the screen

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1 and --
2 MS. MACEDO: Yes.
3 MR. YOUNG: This is 103.
4 Jessica, did you want to go ahead and
5 describe what we have decided on this exhibit?
6 MS. JAHR: Sure. So the objection is hearsay,
7 and there is actually two levels of hearsay in this
8 document. There is the document itself, and then there
9 is the statement.
10 The document itself could come in as a
11 business record or an official record. The second
12 level of hearsay are those statements, and those do not
13 have a hearsay exception.
14 MS. MACEDO: Okay.
15 MS. JAHR: And so those will be considered
16 hearsay, and then therefore, for the board's
17 edification, hearsay statements can't be used as a sole
18 source for any finding. And so they can be used to
19 support other evidence. But they can't be used as the
20 sole source of any finding.
21 So we will allow this in, the document
22 itself. But the hearsay statement within them -- or
23 the statements within them by other people, will be
24 considered hearsay.
25 MS. MACEDO: And that's fine. I mean, when I

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1 mentioned earlier about the prosecution team's
2 selection of the harm factor, that is not the only
3 selection -- or the only evidence that we used to
4 choose the harm factor. And that ruling is acceptable,
5 and I mean, we don't contest it.
6 MR. YOUNG: Okay. And Ms. Thorme?
7 MS. THORME: I'm sorry, what was the question?
8 MR. YOUNG: Do you have any comments on how
9 we're ruling on this exhibit?
10 MS. THORME: No.
11 MR. YOUNG: Okay.
12 MS. JAHR: It's 103.
13 MR. YOUNG: 103.
14 MS. MACEDO: Thank you.
15 MR. YOUNG: Moving right along.
16 MS. MACEDO: I'm sorry.
17 THE WITNESS: So let me back up a little bit.
18 So these -- the point of these couple of
19 slides is the District didn't have observations, for
20 the most part, or eyewitnesses on the 20 different
21 manholes for the 10 hours, 11 hours of the spill. The
22 spill happened during flood conditions and at night
23 partially. And so they are relying on this post-flood,
24 post-spill manhole survey.
25 And so the point I'm trying to get across

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<p>1 here is this survey is speculative in nature. And the 2 first manhole, they probably got right. The second 3 manhole, they said it was just a pit hole flow. I 4 think we disagree with that conclusion. 5 This clean-out, they said with the 6 survey, that there was no flow from this clean-out. 7 And I'm going to show you in a few slides later, that 8 there was flow coming out of the manhole. And that was 9 actually from some resident testimony also under 10 hearsay, also corroborates that. So that was the point 11 of these slides. 12 So moving along. Flow rates. So the 13 duration of flow method, they have to choose a flow 14 rate. And the District has a tendency to choose the 15 lower value of either the photo or the table. So let's 16 look at this a little bit closer to give you examples. 17 So this is a photo from the District. It 18 was at 2:30 in the afternoon during the spill. So not 19 during the peak spill period. It is a location -- let 20 me catch up here. 21 It is TR13B on North Spring Drive. So if 22 you look at this photo, you can see some pit hole flow 23 coming out of it. And the pit hole flow would go back 24 to the previous chart, probably resembles more closely 25 to the 25.</p> <p style="text-align: right;">Page 338</p>	<p>1 you can see, this hole is totally underwater. Probably 2 about a foot of water so you see a lot of disturbance 3 on the surface. 4 So the District couldn't use the photo, 5 so they are not using that method or they couldn't use 6 the table method. So in this case, I looked at the -- 7 it said -- um, it just used the maximum value of the 8 table -- of the photo, which was -- as I mentioned 9 before, was 275 gallons per minute during this time 10 frame. 11 However, if you look at the table, since 12 the table -- since the District didn't use the table in 13 other measurements, they used the same method they used 14 at eight inches, that would be over 420 gallons per 15 minute out of this manhole. So the District 16 consistently picks the lower value out of the two 17 different systems. 18 The next one -- this is the clean-out. 19 Now, the District presented this video evidence, and 20 they did claim there was no discharge at this point. 21 This is from a video screen shot from KSBY as part of 22 Exhibit 116, I want to say. 23 MS. MACEDO: 106. 24 THE WITNESS: 106. 25 If you look at the corner -- and it's</p> <p style="text-align: right;">Page 340</p>
<p>1 However, the District used the table to 2 estimate the height and they estimated a flow during 3 this key time period from 11:00 to 5:00, was 15 gallons 4 per minute. So that is an underestimation. And -- 5 well, here is the photo of the pit hole flow again. 6 The next photo, this is the manhole that 7 is underwater. This manhole is just down the street. 8 It's one of the key manholes. It's probably one of the 9 larger discharge points of the manholes. It's GP13 on 10 the corner of North Spring Avenue. 11 MS. JAHR: Can I just clarify? 12 THE WITNESS: Yes. 13 MS. JAHR: Are these exhibits in evidence? 14 THE WITNESS: Yes. 15 MS. MACEDO: Yes. 16 THE WITNESS: This is from Exhibit 4110. 17 MS. JAHR: 4110? 18 THE WITNESS: Yes. 19 MS. JAHR: Thank you. 20 MS. MACEDO: Just mention the dates from now 21 on. 22 THE WITNESS: Okay. The date is 4-1-10. 23 So it's located on North Spring. 24 Hopefully, I will get the name correct. 25 This photo is taken about 2:30. So as</p> <p style="text-align: right;">Page 339</p>	<p>1 circled in red -- there is clear disturbance. And 2 there's only about three seconds of the video on this 3 news clip, but there is a fair amount of disturbance on 4 the corner of this screen. 5 And like we said, with the residence that 6 the cap and the pipe valve was off, and it's pretty 7 clear that there was discharge at this point. 8 So the District missed it on the manhole 9 survey, and then they just assumed it was a pit hole 10 flow anyways. Well, this is a pipe flow. It's a 11 four-inch-diameter pipe, and it is discharging at this 12 point. So it is going to be much larger than what they 13 estimated at this point. 14 So let's talk about additional 15 discharge -- additional discharge points that the 16 District may or may not have missed. 17 So we have the headworks that 18 Mr. Appleton talked about earlier today, and I will 19 cover that in a minute. 20 We have some residence homes and some 21 additional manholes, too. I won't talk about the -- 22 too much about the additional manholes, but there 23 were -- when we looked at the maps and the elevations 24 of the manholes, it looks like the District missed at 25 least one manhole, and it didn't evaluate that</p> <p style="text-align: right;">Page 341</p>

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<p>1 discharge.</p> <p>2 So this is a photo that was -- that Jeff</p> <p>3 Appleton testified about earlier, and this is at the</p> <p>4 headworks. And he testified that there was flow coming</p> <p>5 out of this gate.</p> <p>6 We didn't know about this. The District</p> <p>7 didn't tell us about this. So we don't really have an</p> <p>8 estimate for how much flow was coming out of it.</p> <p>9 But if you have six or eight inches of</p> <p>10 water coming out of this open door, that is a very</p> <p>11 large volume. I can't confirm 700,000 gallons because</p> <p>12 I need to know what the time frame was, and how long it</p> <p>13 was flowing at that rate, but I am willing to say that</p> <p>14 if that water level was that high, it is very</p> <p>15 substantial.</p> <p>16 So the residents' homes -- there is some</p> <p>17 sewage in the homes. And so for three locations --</p> <p>18 MS. THORME: I want to object.</p> <p>19 MR. YOUNG: Hold on.</p> <p>20 THE WITNESS: -- there is --</p> <p>21 MR. YOUNG: Hold on.</p> <p>22 MS. THORME: I want to object to this line of</p> <p>23 testimony, because there is no evidence to support</p> <p>24 this. This is hearsay evidence.</p> <p>25 MS. MACEDO: That is not entirely correct. If</p> <p style="text-align: right;">Page 342</p>	<p>1 authenticate the photo.</p> <p>2 MS. MACEDO: You produced the photo for us.</p> <p>3 It's a statement against interest.</p> <p>4 THE WITNESS: The resident also gave testimony</p> <p>5 as part of Exhibit 103, too.</p> <p>6 MR. YOUNG: Hang on one second.</p> <p>7 (Discussion held off the record.)</p> <p>8 MR. YOUNG: I have some questions -- go ahead,</p> <p>9 Jessica or -- well, okay. The two claims -- the</p> <p>10 District claims also each of the homes was recovered,</p> <p>11 is that the District's statement?</p> <p>12 MS. MACEDO: The photograph was submitted to</p> <p>13 us --</p> <p>14 MR. YOUNG: I understand.</p> <p>15 MS. MACEDO: -- in evidence by the District.</p> <p>16 MR. YOUNG: I understand that.</p> <p>17 MS. MACEDO: Okay.</p> <p>18 MR. YOUNG: But the interpretation of what is</p> <p>19 in the photograph?</p> <p>20 MS. MACEDO: It can be done by either party.</p> <p>21 I'm telling you --</p> <p>22 MR. YOUNG: No --</p> <p>23 MS. MACEDO: -- what we say.</p> <p>24 MR. YOUNG: Okay. You're telling us, but what</p> <p>25 the statements are on there, the District claims all</p> <p style="text-align: right;">Page 344</p>
<p>1 we go to a slide after this, there is a photograph</p> <p>2 submitted by the District.</p> <p>3 THE WITNESS: This slide, yes.</p> <p>4 MR. YOUNG: Why don't you give us that.</p> <p>5 THE WITNESS: Okay.</p> <p>6 MR. YOUNG: Why don't you give us that first.</p> <p>7 THE WITNESS: Okay.</p> <p>8 MR. YOUNG: The evidence to support that slide,</p> <p>9 let's see that first.</p> <p>10 THE WITNESS: So this slide is from Bates</p> <p>11 number 2943. And this photo is not the best photo, but</p> <p>12 it is a photo from the resident's home. And I will</p> <p>13 take a few minutes to look at it. This is a bathtub in</p> <p>14 the back of the bathroom, and there is sewage in the</p> <p>15 bathtub. You can tell by the gray water.</p> <p>16 MR. YOUNG: And who took the photograph?</p> <p>17 THE WITNESS: The resident.</p> <p>18 MR. YOUNG: And when was it taken?</p> <p>19 THE WITNESS: During the flooding event, the</p> <p>20 spill day, and it was given to the District. And the</p> <p>21 District submitted it to us as evidence as part of</p> <p>22 their exhibits. And this is shown in their exhibit on</p> <p>23 2943.</p> <p>24 MS. THORME: But the photo is still hearsay</p> <p>25 because we don't have the person who took the photo to</p> <p style="text-align: right;">Page 343</p>	<p>1 sewage in the homes was recovered.</p> <p>2 MS. MACEDO: That is a statement from a</p> <p>3 document that the District submitted to us, and we can</p> <p>4 pull that up.</p> <p>5 MR. YOUNG: Is that true?</p> <p>6 MS. MACEDO: Yes, that is in evidence.</p> <p>7 MR. YOUNG: I'm asking Ms. Thorme.</p> <p>8 MS. THORME: I'm not sure what document she's</p> <p>9 talking about. So --</p> <p>10 MR. YOUNG: Well, I'm just --</p> <p>11 MS. THORME: -- if she can pull up the</p> <p>12 underlying document that supports that statement, that</p> <p>13 would be fine.</p> <p>14 MS. MACEDO: You bet.</p> <p>15 THE WITNESS: It's 29, page 43 is the photo and</p> <p>16 the e-mail is page 2.</p> <p>17 MS. JAHR: And it is the page beforehand, and</p> <p>18 prior to that, there's an e-mail saying that the SSO</p> <p>19 report has been certified in those homes.</p> <p>20 MS. MACEDO: Yes. I hope this is not being</p> <p>21 charged against our time.</p> <p>22 MS. JAHR: No, this is an objection. There is</p> <p>23 no time for the verbatim part.</p> <p>24 MR. JEFFRIES: It's our time.</p> <p>25 MS. MACEDO: It's absolutely your time.</p> <p style="text-align: right;">Page 345</p>

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<p>1 Absolutely. When is the pizza getting here?</p> <p>2 MR. JEFFRIES: We are going to --</p> <p>3 MS. THORME: Well, this was -- this is inserted</p> <p>4 by the District for the issue of the private sewer</p> <p>5 lateral discharges which are in the reporting issues</p> <p>6 related to that.</p> <p>7 MR. YOUNG: Folks, please hold on one second.</p> <p>8 Ms. Thorme is speaking.</p> <p>9 MR. JEFFRIES: All right.</p> <p>10 MR. YOUNG: Go ahead.</p> <p>11 MS. THORME: So that was rebuttal to the</p> <p>12 private sewer lateral certification document, which is</p> <p>13 no longer an issue. So to the extent that that went</p> <p>14 towards the private sewer lateral discharge issue, that</p> <p>15 is no longer part of the case, I'm not sure it</p> <p>16 survives.</p> <p>17 MS. JAHR: Well, the nondischarge violations</p> <p>18 may not be part of the case anymore. However, the</p> <p>19 allegations that there was discharge in the homes and</p> <p>20 either led to harm or there was more sewage discharge,</p> <p>21 is still part of the case.</p> <p>22 MS. THORME: Right, but --</p> <p>23 MS. MACEDO: There you go, Jessica. It's up.</p> <p>24 This is the photo of the previous page, and this is the</p> <p>25 text immediately after the photo.</p> <p style="text-align: right;">Page 346</p>	<p>1 and --</p> <p>2 THE WITNESS: Well, before she starts giving</p> <p>3 testimony to you, I want to comment more about the</p> <p>4 photograph and the resident's testimony here, and the</p> <p>5 point I want to make about this.</p> <p>6 MS. JAHR: That's fine, but we just need to</p> <p>7 determine the hearsay first.</p> <p>8 I think it's -- at this point, it is</p> <p>9 hearsay testimony, but I will allow it, and we will --</p> <p>10 MR. YOUNG: Are we referring to this exhibit</p> <p>11 here (indicating)?</p> <p>12 MS. JAHR: The picture itself.</p> <p>13 MR. YOUNG: The picture. So did this picture</p> <p>14 comes with this e-mail?</p> <p>15 MS. MACEDO: Yes.</p> <p>16 THE WITNESS: Yes.</p> <p>17 MR. YOUNG: Is it related at all?</p> <p>18 THE WITNESS: Yes, it is.</p> <p>19 MS. MACEDO: Yes.</p> <p>20 MR. YOUNG: See, that comes -- that counts as</p> <p>21 an admission.</p> <p>22 MS. MACEDO: Yes.</p> <p>23 MR. YOUNG: The e-mail is from the Wallace</p> <p>24 Group, who was an agent of the District, related to the</p> <p>25 District.</p> <p style="text-align: right;">Page 348</p>
<p>1 MS. JAHR: Right.</p> <p>2 MS. THORME: Right. So the question of where</p> <p>3 it went and what kind of harm it caused, there is not</p> <p>4 evidence of harm besides that it backed up and went</p> <p>5 back down the tub.</p> <p>6 MS. MACEDO: Yes, but the people were exposed</p> <p>7 to it.</p> <p>8 MS. THORME: That is argument.</p> <p>9 MS. JAHR: I think at this point, in this -- at</p> <p>10 this, we're looking at the actual amount of discharge;</p> <p>11 is that correct? What we were looking at?</p> <p>12 THE WITNESS: That is correct.</p> <p>13 MS. JAHR: At this point --</p> <p>14 THE WITNESS: That's what I'm talking about.</p> <p>15 MS. JAHR: -- you're not arguing about harm.</p> <p>16 THE WITNESS: Correct.</p> <p>17 MS. MACEDO: True.</p> <p>18 MS. JAHR: So I don't want to --</p> <p>19 MS. MACEDO: True.</p> <p>20 MS. JAHR: -- get the issues mixed up.</p> <p>21 MS. MACEDO: That's correct.</p> <p>22 MS. THORME: But it was not discharged if it</p> <p>23 went back into the sewer system. That is the point.</p> <p>24 So if it didn't -- if it went into the tub and never</p> <p>25 went out of the tub and went right back down the drain</p> <p style="text-align: right;">Page 347</p>	<p>1 MS. THORME: Correct, but the objection is to</p> <p>2 the foundation of the photo --</p> <p>3 MR. YOUNG: The photograph.</p> <p>4 MS. THORME: -- so there is no one -- we can</p> <p>5 see it, and yes, we can look at it, but we can't ask</p> <p>6 any questions of the homeowner of what happened and</p> <p>7 didn't happen. So I mean, that is the -- as far as the</p> <p>8 relation to the volume issue.</p> <p>9 MR. YOUNG: Yeah --</p> <p>10 MS. JAHR: Right.</p> <p>11 MR. YOUNG: -- I can't --</p> <p>12 MS. MACEDO: Except to the fact that the</p> <p>13 statement contained in the e-mail seems contradicted by</p> <p>14 the photo submitted by the District in the exact same</p> <p>15 document on the page before.</p> <p>16 MR. YOUNG: Well, the photo should come in with</p> <p>17 the e-mail. The whole thing about the foundation and</p> <p>18 authenticity is really to make sure that you have got a</p> <p>19 reliable document in front of you, reliable evidence.</p> <p>20 I think if the District submitted this photograph --</p> <p>21 MS. MACEDO: If the District submitted the</p> <p>22 document --</p> <p>23 MR. YOUNG: -- in the record --</p> <p>24 MS. MACEDO: -- I don't have any objection as</p> <p>25 to its authenticity. It's in, as long -- at least it's</p> <p style="text-align: right;">Page 349</p>

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<p>1 to the foundation. I understand that hearsay 2 objection -- 3 MR. YOUNG: Right. 4 MS. MACEDO: -- but he submitted the document. 5 MR. YOUNG: Right. I understand that. 6 MS. MACEDO: Okay. 7 MR. YOUNG: Yeah. Okay. So I was getting back 8 to where we were concerned -- 9 MS. MACEDO: Yeah. 10 MR. YOUNG: -- with the first slide. 11 MS. MACEDO: Yeah. So if we can return to our 12 presentation, this is the photo that was a later slide 13 to which Ms. Thorne objected -- 14 MR. YOUNG: Right. 15 MS. MACEDO: -- in talking about the sewage. 16 So do you want to go in order or out of 17 order? 18 THE WITNESS: I'm fine right here. 19 MS. MACEDO: Okay. 20 MR. YOUNG: Okay. 21 THE WITNESS: Because it's really -- the photo 22 is attached to the e-mail, and particularly the 23 testimony from the District, when you look at the 24 e-mail, is contradicted by the testimony that was given 25 by the residents at the time. That's what we can see</p> <p style="text-align: right;">Page 350</p>	<p>1 Now, the volume that we think really is 2 underestimated is on Monday's spill. They 3 underestimated it as 2,200 gallons, but it really also 4 contradicts the District's model of what happened 5 between Sunday and Monday. So that is the main reason 6 I want to talk about Monday's spill. 7 So this photo was submitted by the 8 District. It is once again, GB15, and this is Exhibit 9 4111. And it shows flow coming from around the 10 manhole. This is the annular flow. And we go back to 11 the table -- the CWE table, it is about 15 gallons 12 per -- 13 THE REPORTER: I'm sorry, but could you repeat 14 that? 15 THE WITNESS: It is 15 gallons per minute, GPM. 16 Now, the District thought the Monday 17 spills was a very small volume. And they estimate a 18 discharge for 72 minutes at only four gallons per 19 minute, and they also estimate a discharge for six 20 other locations at very low flow, and that is why they 21 come out to the 2200. 22 Well, this photo that's shown, when it 23 was taken, looks more like 50 gallons per minute. And 24 then there was also a resident in their exhibit that 25 explains that there was discharge coming in at 6:30 in</p> <p style="text-align: right;">Page 352</p>
<p>1 from the photo, and their understanding of why they 2 feel that the discharge was all recovered, actually 3 does not match how they calculated the volume 4 discharges. 5 So basically earlier in this e-mail 6 chain, the District said there was sewage coming out of 7 the toilets in this particular case, in other 8 residences and was discharged. And then the floodwater 9 came into the house. And so that sewage and 10 floodwaters mixed, and there was discharge from the 11 floodwaters left. 12 So my point for these series of slides 13 was that some of the sewage mixed with the floodwaters, 14 and was not totally recovered within the system. 15 Later the District said there was 16 confusion among the residents, and that they felt that 17 there was no discharge from the bathtubs. And 18 therefore, they didn't report these as discharge 19 points, because the flow was fully recovered, in their 20 opinion. 21 Okay. Moving on. Monday's spill. 22 So the District maintains that it was 23 small. There is photos and residents that indicate the 24 spill was much larger and longer than the District had 25 indicated.</p> <p style="text-align: right;">Page 351</p>	<p>1 the morning. 2 So this is the effluent meter for Monday, 3 and is also very telling. The next morning, you can 4 see a big dip where the effluent with the -- for 5 whatever reason, that went down to zero at 3:00 in the 6 morning. And then there are two other dips here where 7 they additionally looked like they had pump problems of 8 some sort. 9 But in the District's notes, they then 10 turn on the Pismo Beach pump again, and the effluent 11 shoots back up. Now, there was some light rain early 12 in the morning. It doesn't show it. 13 The light rain does not explain why there 14 was discharge on Monday morning. If there was 15 discharge from the manholes, that means that they 16 weren't pumping down the right form (phonetic) and 17 gaining capacity. So throughout the whole period, the 18 system still has to have the -- be near capacity, if 19 not overflowing still. 20 And so when the District -- when the 21 system recovers and starts draining down all the water 22 that is within all the pipes in the sewer system, 23 actually, we believe that is when it starts to peak up 24 here, about 10:00 when it's very high at 6 to 7, GPM 25 million gallons per day. That is when the system</p> <p style="text-align: right;">Page 353</p>

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<p>1 finally, we believe, drains down and then they process 2 this stored water.</p> <p>3 And so I bring this point up because the 4 District had two consultants. So CH2M Hill, they 5 agreed that the District misclassified the flow out of 6 a couple of the manholes. And this is not even talking 7 about the discharge of the headworks.</p> <p>8 Now, CHT -- CH2M Hill claims that the 9 duration on flow method is more reliable. However, the 10 evidence that I showed you today about the discharge 11 points, particularly at the headworks, how they 12 underestimated the flow or the flow rate is suspect. 13 The manhole survey is also very suspect. We believe 14 that the durational flow method, as applied by the 15 District, is unreliable.</p> <p>16 The second main point that CH2M Hill made 17 in their criticism of approach was the stored volume. 18 And so CH2M Hill thought the stored volume was 19 processed Sunday evening.</p> <p>20 However, like I said before, if that 21 stored volume was processed Sunday evening, there would 22 be no Monday morning spills. And the peak in the 23 effluent meter on Monday afternoon, that is when the 24 store volume was processed. So we didn't miss the 25 stored volume in our calculations.</p> <p style="text-align: right;">Page 354</p>	<p>1 And so for the first five hours from 11:00 to 4:00, the 2 District estimated that there was only 1.2 GPM coming 3 out and being discharged out of the manholes.</p> <p>4 We don't believe that that is a credible 5 estimate. We think that underestimated the spill. In 6 fact, we still think our spill volume is relatively 7 conservative considering the testimony that the flows 8 at that point was closer to 10 MGD, instead of the 9 maximum that we assumed was about less than 9 MGD.</p> <p>10 And so this table is just a number 11 between the two events. And it is basically that chart 12 and the numbers out of that chart.</p> <p>13 So the pump station method that we 14 used -- the District actually used this method, too, 15 but they disregard it in their submittals.</p> <p>16 And this is our prosecution team. So 17 from the two hours from 11:00 to 1:00, our spill levels 18 were very close to that. RMC's volume drops off a 19 little closer in their rainfall I and I analysis, so it 20 is a little bit lower.</p> <p>21 But if you look at the first two hours 22 from the duration of the flow method used by the 23 District, it's not even a hundred thousand gallons 24 during this time period. We don't believe that is a 25 credible estimate, and not an estimate that you can</p> <p style="text-align: right;">Page 356</p>
<p>1 Now, their other consultant, RMC, used 2 the detailed hydraulic analysis that's based on the 3 rainfall of I and I, and their estimate was 674,000 4 gallons.</p> <p>5 Now, even though RMC does that detailed 6 hydraulic analysis, we believe that it failed to 7 account for the flooding and storm water in the I and I 8 due to the flooding events. That is why you have 9 flooding manholes that are covered with floodwaters. 10 There is going to be more inflow and infiltration than 11 what happened to occur on a normal rainfall event.</p> <p>12 Furthermore, RMC did not analyze the rest 13 of the District -- the information that was provided by 14 the District.</p> <p>15 So any mistakes that were made by the 16 District, aren't necessarily incorporated into RMC's 17 analysis and conclusions, and that applies the same to 18 CH2M Hill's. Any errors that were made by the 19 District, will be incorporated into CH2M Hill's 20 analysis and their conclusions also.</p> <p>21 So finally I want to show -- this was our 22 confirmation slide for us. And so for this slide, we 23 looked at the District flow rates and rainfall versus 24 our spill volume.</p> <p>25 So this is their duration on the flow.</p> <p style="text-align: right;">Page 355</p>	<p>1 base a finding on.</p> <p>2 So final thoughts. I'm just basically 3 repeating myself here. The District's estimate of 4 470,000 gallons, 298 is unreliable. There is missed 5 locations, underestimates of the flow, it does not 6 include storm water.</p> <p>7 We used data from the effluent meter to 8 come up with a reliant estimate, and the spill volume 9 of 1.1 million gallons.</p> <p>10 MS. MACEDO: He is my final witness for my 11 direct.</p> <p>12 Q I want to go over the evidentiary 13 evidence you had. So I have taken a look -- Matt, you 14 can stay there.</p> <p>15 So I have taken a look at your September 16 4th and 5th rulings on hearsay. So Dr. Buffleben, for 17 Exhibits 3 and 4, I'm going to pull up the 18 prosecution's index submitted with its submission on 19 July 27th.</p> <p>20 And the calculations and spreadsheets for 21 Exhibit 3 and 4, you assisted me with preparing those, 22 correct?</p> <p>23 A Correct.</p> <p>24 Q In your regular course of business?</p> <p>25 A Correct.</p> <p style="text-align: right;">Page 357</p>

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1 **Q And you make -- you usually make those**
2 **types of records at or near the time -- you actually**
3 **made those types of records at or near the time that we**
4 **created the exhibit, right?**
5 A Correct.
6 **Q All right. And 7, the violations for**
7 **late reporting for sewer backups and the District**
8 **certified report. I believe that was a CIWQS?**
9 MS. THORME: Can we respond to these as she's
10 going through these?
11 MR. YOUNG: Yeah, go ahead.
12 MS. THORME: What -- is the underlying data
13 that you used, that input into the spreadsheet, in
14 evidence?
15 THE WITNESS: Yes, the spreadsheets were in
16 evidence, and then the underlying data came from the
17 District, and the District submitted that as evidence,
18 too.
19 MS. THORME: Where is that in evidence?
20 THE WITNESS: In the OM omissions, and also in
21 the September submittal. I would have to look at the
22 exhibit sheets.
23 MS. MACEDO: It would be NOV number 6.
24 THE WITNESS: And the supplemental information
25 that was submitted by the District on Exhibit 48.

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1 MS. THORME: So apparently there is a link in
2 that spreadsheet that goes back to a file that is on
3 Mr. Sarmiento's (phonetic) computer that is not in
4 evidence. And so we were unable to link and get
5 answers when we were looking at those spreadsheets to
6 where all the data came from.
7 THE WITNESS: So that spreadsheet in particular
8 that we're talking about is Exhibit 3, is actually a
9 document that was originally gotten from the District.
10 But in any case, it doesn't matter. We didn't end up
11 using the effluent data for our estimate.
12 MR. YOUNG: So are Exhibits 3 and 4, simply
13 exhibits you have produced for the hearing itself based
14 on other information?
15 THE WITNESS: These are exhibits we produced
16 for the ACL --
17 MR. YOUNG: For the hearing. So these are
18 demonstrative of the work you did?
19 THE WITNESS: Correct.
20 MS. MACEDO: Yes.
21 MR. YOUNG: Okay. All right.
22 MS. MACEDO: Number 7, I believe it's about
23 their reporting, so it is not relevant.
24 MS. JAHR: Okay. Before we move on --
25 MS. MACEDO: Sure.

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1 MS. JAHR: -- I want to make sure we have final
2 decisions --
3 MS. MACEDO: Oh, I'm sorry.
4 MS. JAHR: -- on them.
5 MR. YOUNG: Well, you know to the extent that
6 what we're going to do is just go through the
7 documents, and if they are demonstrative, then I'm just
8 going to let them in because they are just trial
9 exhibits, to demonstrate the testimony.
10 So that is how I interpret 3 and 4 right
11 now.
12 MS. THORME: Okay. Then can we make a request
13 that their presentation today as a demonstrative also
14 go into the record, because of the fact if this does
15 get appealed, that they were talking from slides that
16 aren't in the record?
17 MS. MACEDO: I'm happy to make a presentation
18 of separate exhibits.
19 MR. YOUNG: Okay. Let's move on.
20 BY MS. MACEDO:
21 **Q Okay. Number 7, was it made in the**
22 **regular course of your business?**
23 A Yes.
24 MR. YOUNG: Can we take a look at that? Is
25 there a way to split the screen?

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1 MS. MACEDO: You want to see number 7 as well?
2 MR. YOUNG: Yes, I'd like to.
3 MS. MACEDO: Oh, sure, sure, sure.
4 MS. THORME: I'm sorry, but didn't you say that
5 that was not needed any longer?
6 MS. MACEDO: It wasn't, but I'm giving him the
7 opportunity to take a look at it.
8 MR. YOUNG: Well, if it's not needed, can it be
9 withdrawn?
10 MS. MACEDO: Okay.
11 MR. YOUNG: Okay.
12 MS. MACEDO: Okay. Number 8 is similar to 103.
13 It was --
14 MR. YOUNG: Let's look at 8.
15 MS. MACEDO: -- the first version of the
16 prosecution team's investigation of homeowner
17 interviews.
18 MS. THORME: So this says that it was updated
19 by Exhibit 103. So I don't know if this exhibit is
20 necessary any longer.
21 MS. MACEDO: It's still relevant.
22 MR. YOUNG: I want to see the exhibit.
23 MS. JAHR: Yeah.
24 MS. MACEDO: So this is Exhibit 8. So this
25 is -- was the first version -- the earlier version of,

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1 basically, Exhibit 103.
2 MR. YOUNG: We left this in.
3 MS. JAHR: We let the updated version --
4 MS. MACEDO: Right.
5 MS. JAHR: -- stay in.
6 MR. YOUNG: Okay.
7 MS. MACEDO: Yeah.
8 MR. YOUNG: So do you need this one?
9 MS. MACEDO: If you want 103 to be replaced as
10 8, that's fine. I just wanted to show it to you since
11 you asked.
12 MR. YOUNG: Okay. Let's do it. Let's take 8
13 out then.
14 MS. MACEDO: That's fine.
15 MS. JAHR: Is all the information in 103 also
16 contained in 8?
17 MS. MACEDO: Yes.
18 MR. YOUNG: So 8 is withdrawn. The next one.
19 MS. MACEDO: Yes.
20 **Q And 17 is the staff billing rate.**
21 **Matt, is this something you use in your**
22 **regular course of your business?**
23 A Yes.
24 **Q Okay. Is this document something that**
25 **the Office of Enforcement uses to indicate how much**

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1 **staff costs are billed at?**
2 A Yes.
3 **Q Okay. And for the ACLC's that you**
4 **reviewed for creating the chart indicated in Exhibit**
5 **101, does this provide the basis for valuing staff**
6 **costs at \$150?**
7 A Yes.
8 MS. MACEDO: Okay. So this is where this
9 document comes from.
10 MR. YOUNG: Is it part of your job to know what
11 these numbers are?
12 THE WITNESS: I have a general knowledge of
13 these numbers, yes --
14 MR. YOUNG: And is --
15 THE WITNESS: -- and how much staff costs for
16 Office of Enforcement, yes.
17 MR. YOUNG: And is that part of your job --
18 THE WITNESS: Yes.
19 MR. YOUNG: -- is to use that information?
20 THE WITNESS: Yes.
21 MR. YOUNG: And where does the information come
22 from?
23 THE WITNESS: The information comes from here,
24 and it is from --
25 MR. YOUNG: No, who is the source?

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1 THE WITNESS: It's the --
2 MR. YOUNG: Is it the accounting office or
3 something?
4 THE WITNESS: The Department of Personnel
5 Administration, I believe.
6 MR. YOUNG: Okay.
7 THE WITNESS: Or I think they might be called
8 Cal HR.
9 MS. MACEDO: Okay. And 18 was the cost-benefit
10 analysis, and to the extent that it was ruled hearsay,
11 it can stay hearsay, because it would be corroborated
12 by Mr. Horner's testimony this morning.
13 MS. THORME: We also have an objection to the
14 authentication in that document.
15 MR. YOUNG: Let's look at them.
16 MS. MACEDO: Okay.
17 MS. JAHR: On 18?
18 MS. THORME: I believe so, yes.
19 MS. JAHR: This morning, Dr. Horner --
20 MS. MACEDO: Authenticated it.
21 MS. JAHR: -- authenticated it.
22 MS. THORME: Okay. But she didn't ask him --
23 she didn't ask specifically for him to authenticate it.
24 MS. MACEDO: Okay, but he used it, and he said
25 it was what he purported it to be.

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1 MR. JAHR: She asked him questions regarding
2 whether he prepared the document, and whether it was a
3 true and accurate copy.
4 MS. THORME: Okay.
5 MR. YOUNG: I think he said enough to
6 authenticate it.
7 MS. MACEDO: Yeah.
8 MS. THORME: Okay.
9 MS. JAHR: He actually authenticated 18, 109
10 and 113.
11 MR. YOUNG: Okay. The next one.
12 MS. MACEDO: Okay.
13 MR. YOUNG: The next one.
14 MS. MACEDO: Okay, 19 and 20 are the exhibits
15 that -- e-mails from Mr. Appleton, who testified. So
16 to the extent they want them to remain hearsay, they
17 can, because Mr. Appleton testified to them.
18 MS. THORME: He didn't authenticate those
19 e-mails.
20 MS. MACEDO: No, he did not because he
21 testified.
22 MR. YOUNG: Well, they are hearsay. Hearsay is
23 admissible.
24 MS. THORME: Well, they also weren't discussed,
25 those e-mails. And there was -- he didn't lay any

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1 foundation for them. They weren't discussed, so we
2 would ask that those be excluded.
3 MS. MACEDO: He testified. I'm fine with --
4 I'm fine if they are excluded. He testified.
5 MR. YOUNG: Okay.
6 MS. MACEDO: I don't think -- I don't think --
7 I mean, this one is on District letterhead. To the
8 extent that they are regularly received by water board
9 personnel --
10 MR. YOUNG: I will --
11 MS. MACEDO: -- someone else can authenticate
12 them. They are regularly received by people in region
13 three.
14 MR. YOUNG: Okay. But here's the thing,
15 hearsay can come in.
16 MS. MACEDO: It can.
17 MR. YOUNG: Hearsay can come in.
18 MS. MACEDO: This is an administrative
19 proceeding.
20 MR. YOUNG: The only thing we're quibbling
21 about is to what extent it can be used.
22 MS. MACEDO: Right.
23 MR. YOUNG: So that really is the issue, so --
24 MS. MACEDO: Yes. So moving on to 24.
25 MR. YOUNG: So let's deal with that.

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1 Have you withdrawn --
2 MS. MACEDO: I'm sorry --
3 MR. YOUNG: -- his e-mail?
4 MS. MACEDO: I would prefer that 19 and 20 come
5 in as hearsay, and they be corroborated --
6 MR. YOUNG: Okay.
7 MS. MACEDO: -- by Mr. Appleton's direct
8 testimony.
9 MR. YOUNG: Okay. They can't come in because
10 he did not authenticate them, and you had him as a
11 witness.
12 MS. MACEDO: Okay. That's fine.
13 MR. YOUNG: Had you done that, they would come
14 in.
15 MS. MACEDO: That's fine.
16 MR. YOUNG: So they have got to be -- they're
17 out.
18 MS. MACEDO: That's totally fine.
19 So 24, is a CIWQS report.
20 **Q Dr. Buffleben, is a CIWQS report**
21 **something you conduct or run in the regular course of**
22 **your business?**
23 A Yes.
24 **Q And is this a report that you prepared in**
25 **making Exhibit 24?**

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1 A Yes.
2 **Q Okay. This -- oh, it's not CIWQS. This**
3 **is actually a CALIMA (phonetic) report that we**
4 **submitted as Exhibit 24, indicating a nonchlorinated**
5 **spill.**
6 **Do you recognize this?**
7 A Yes.
8 **Q Okay.**
9 MS. THORME: We object to the spreadsheet part
10 of 24.
11 MR. YOUNG: You object to which part?
12 MS. THORME: There are two different documents
13 that are part of 24. One of them is the CIWQS
14 document. The other document is a spreadsheet.
15 MS. MACEDO: Okay. There is the spreadsheet.
16 This is the spreadsheet portion of a CIWQS report.
17 **Q Dr. Buffleben, can you describe what this**
18 **is?**
19 A It is a report about the spills, I
20 believe, in a CIWQS, and the violation --
21 MS. JAHR: If I can make a clarification. I
22 don't believe you objected to 24 previously.
23 MS. WRIGHT: Number 24 was listed on the
24 evidentiary ruling of the document that needed to be --
25 that needed foundation laid to be authenticated in

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1 order to be admitted.
2 MS. MACEDO: And the rulings clarified that
3 Exhibit A, my responses to the evidentiary
4 objections --
5 MS. JAHR: Okay.
6 MS. MACEDO: -- allowed all three of my
7 engineers to authenticate the documents.
8 MS. JAHR: Okay. I see it now. Sorry.
9 So the question is to what extent is this
10 spreadsheet -- who made this and --
11 MS. MACEDO: Sure.
12 MS. JAHR: -- how is it created?
13 THE WITNESS: It was made in our regular
14 business --
15 MS. MACEDO: It was a CIWQS report that was
16 one --
17 MR. YOUNG: Let him testify as to --
18 MS. MACEDO: Okay.
19 THE WITNESS: It was a CIWQS report done by Jim
20 Fischer looking at the District's sewer system and the
21 treatment plant and violation --
22 MR. YOUNG: This --
23 THE REPORTER: Excuse me, you faded off at the
24 end of your answer.
25 THE WITNESS: Oh, I'm sorry.

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1 It's a violation report for the
2 collection system and wastewater treatment plant from
3 CIWQS, which is the State database for reporting
4 violations.
5 MR. YOUNG: So this is a -- is this a report
6 that you took from CIWQS data, and you generated this
7 report? Is this what this is?
8 THE WITNESS: Yes.
9 MR. YOUNG: Okay.
10 MS. THORME: And we objected to this document,
11 that it was inaccurate. And then this included things
12 in there about the other Districts, besides this
13 District.
14 MR. YOUNG: And I think the way to deal with
15 that would be for Melissa to have a witness and ask him
16 a question on cross or have a witness deal with that
17 or --
18 MS. THORME: Okay.
19 MR. YOUNG: -- point that out to us in
20 closing --
21 MS. THORME: Okay.
22 MR. YOUNG: -- if it's not accurate.
23 MS. THORME: Okay.
24 MR. YOUNG: Next one.
25 MS. MACEDO: Okay. Almost done.

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1 **Q Okay, 101 is the ACLC comparison chart.**
2 **Did you prepare this?**
3 A Yes, I did.
4 **Q And in your regular course of business?**
5 A Yes.
6 MS. MACEDO: Okay. Do you have any questions
7 about this, either Ms. Thorme or the Board?
8 MR. YOUNG: Where did you get this information
9 from?
10 THE WITNESS: This is from the websites and
11 CIWQS reports, our original water board and our State
12 Board Department of Enforcement actions. And so I
13 downloaded the documents ACLC's or ACLO's to look at
14 the penalties and the volumes and the factors
15 regarding -- under the enforcement policy as
16 comparisons to the ACLC here today.
17 MR. YOUNG: Did you make similar reports or
18 exhibits like this before in your other cases?
19 THE WITNESS: This is my first case for this,
20 but we have used this for other cases, yes. Actually
21 this particular spreadsheet, particularly in North
22 Tahoe.
23 MR. YOUNG: Is this an exhibit -- which one is
24 it?
25 THE WITNESS: Yes.

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1 MS. MACEDO: It's 101.
2 MS. JAHR: It's 101.
3 MR. YOUNG: All right.
4 MS. MACEDO: Okay, 103 we have already --
5 MR. YOUNG: Hold on. We're not off this one
6 yet.
7 MS. JAHR: That's fine. That's fine.
8 MS. MACEDO: Okay.
9 MS. JAHR: You can go ahead.
10 MR. YOUNG: Okay.
11 MS. MACEDO: So 103 is already taken care of,
12 and 105 is --
13 **Q Dr. Buffleben, you prepared Exhibit 105,**
14 **correct?**
15 A Correct.
16 **Q In your regular course of business?**
17 A Correct.
18 **Q Can you describe what it is?**
19 A It is testimony about the District's
20 spill and analysis.
21 MS. MACEDO: Okay. To the extent it
22 corroborates his testimony, it is just a summary of
23 what he testified to. As far as I'm concerned, it's
24 argument. So it does not need to be evidence.
25 MR. YOUNG: Is this your document? You

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1 produced this?
2 THE WITNESS: Yes. It's a prosecution team,
3 but I was the primary author on this document.
4 MS. THORME: We would accept it as argument
5 just like a brief --
6 MR. YOUNG: Okay.
7 MS. THORME: -- if that is what they're willing
8 to put it up as.
9 MR. YOUNG: Okay.
10 MS. MACEDO: Okay, 107 is simply a full copy of
11 a Wallace document. And this is something that I
12 agreed to, without incident, for Exhibits 6 and 20.
13 There were just pieces missing, and I supplied a full
14 copy as Exhibit 107, and the District objected. That's
15 all it is.
16 MR. YOUNG: Well, what is the objection based
17 on?
18 MS. THORME: It was lack of authentication and
19 foundation, I think.
20 MR. YOUNG: And did the District produce this
21 to the original board?
22 MS. THORME: I --
23 MS. MACEDO: It was --
24 MS. THORME: It may have been part of the
25 subpoenaed document.

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1 THE WITNESS: No, actually it was part of the
2 NOV response.
3 MS. THORME: Okay. I don't know where it came
4 from.
5 THE WITNESS: It's --
6 MS. MACEDO: It was produced in Exhibit 6,
7 incomplete.
8 MS. THORME: So it will be a hearsay document
9 because he's not here to testify about the document,
10 the author. And I don't believe they cited to it in
11 their case.
12 MR. YOUNG: Well, if it came in with the NOV
13 response, then it can come in as a business record or
14 a --
15 MS. JAHR: Admission.
16 MR. YOUNG: I mean, Mr. Wallace is the chief
17 engineer.
18 MS. THORME: Right. But the point is they
19 never cited to this for any purpose so...
20 MR. YOUNG: Okay.
21 THE WITNESS: Yes, we did.
22 MS. THORME: You did?
23 MS. MACEDO: We were trying to provide a
24 complete copy. I mean, to the extent that you did it
25 several times, I'm shocked that you're --

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1 MS. THORME: Okay.
2 MS. MACEDO: -- continuing to object to it,
3 but --
4 MS. THORME: Okay. We will withdraw our
5 objection to this document.
6 MS. MACEDO: All right. The last one. The 109
7 by Horner was his resume and comments on the Ben
8 (phonetic) model, and he authenticated and offered
9 testimony today, so that is it.
10 MR. YOUNG: So this exhibit explains and
11 supplements his testimony?
12 MS. MACEDO: That's right.
13 MS. THORME: So there are two other documents
14 that were hearsay documents. One is 99, and we used it
15 so we will withdraw the objection to Number 99.
16 And the other one was the video that was
17 106, and that has not been authenticated, and they have
18 not used it.
19 THE WITNESS: No, we have used it.
20 MS. MACEDO: We did.
21 MS. JAHR: They used a screen shot of it.
22 MS. THORME: Which was in evidence separately.
23 The District had turned that screen shot in.
24 THE WITNESS: We used same screen shot.
25 MS. THORME: Okay. And then we have the same

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1 objection.
2 MS. JAHR: Is the screen shot substantially
3 different than that screen shot?
4 THE WITNESS: I can't -- they are very similar.
5 They could be within a couple of grams of each other.
6 MS. MACEDO: I'm sorry, what is the argument?
7 So there are no objections to 99, and
8 she's okay with the video and her screen shot of 106,
9 but not our screen shot of 106? Is that what you
10 are --
11 MS. THORME: No, I'm okay with the video. And
12 I said you didn't use the video. And then
13 Mr. Buffleben said you did in a screen shot, which I
14 had assumed was the same screen shot that we had put
15 in. But now you're saying that it is not.
16 So we still have the same objection. You
17 can use our screen shot that is in evidence, but this
18 has not been authenticated, the video.
19 BY MS. MACEDO:
20 **Q Well, in terms of the screen shot from**
21 **the video, Dr. Buffleben, the screen shot you used in**
22 **your testimony, is that something that you acquired in**
23 **the regular course of business?**
24 A Yes.
25 **Q And you put it in the presentation today**

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1 **in the regular course of your business?**
2 A Yes.
3 **Q And is it an accurate representation of**
4 **what you received from KSBY pursuant to subpoena?**
5 A Yes.
6 MS. THORME: But the person who took the video
7 is not here. We can't ask them what was happening over
8 in that corner. What they're pointing to is some evil
9 thing that was happening. So that is the problem is we
10 can't ask what was happening over there.
11 MR. YOUNG: Yeah, I think with that exhibit,
12 you just need to point that out to us because the photo
13 shows what it shows. And that is their interpretation
14 of what is going on with it.
15 MS. THORME: Okay. But they only used the
16 screen shot. So I would say that is coming through
17 their demonstrative --
18 MR. YOUNG: Okay.
19 MS. THORME: -- presentation. They did not run
20 the video that was provided as an exhibit. So I would
21 ask that the video itself be excluded, and they can
22 have that screen shot in their presentation.
23 MR. YOUNG: That's fine.
24 MS. MACEDO: We're fine with that.
25 I have no further direct.

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<p>1 MR. YOUNG: Okay.</p> <p>2 MS. THORME: Mr. Chair?</p> <p>3 MR. YOUNG: Yes.</p> <p>4 MS. THORME: I understand this is going to be</p> <p>5 complicated, but I have a person who has to leave to</p> <p>6 catch a flight. So I would ask if we can do him out of</p> <p>7 order and let me cross Mr. Buffleben -- or</p> <p>8 Dr. Buffleben after.</p> <p>9 MR. YOUNG: That's fine.</p> <p>10 MS. THORME: Okay. Thank you very much.</p> <p>11 MR. YOUNG: That's fine.</p> <p>12 MS. THORME: So I know this is a little</p> <p>13 complicated because they have not closed their case</p> <p>14 yet, but if we can bring on Paul Sanghera (phonetic)</p> <p>15 from RMC.</p> <p>16 MS. MACEDO: You're two or three --</p> <p>17</p> <p>18 DIRECT EXAMINATION</p> <p>19 THE WITNESS: My name is Paul Sanghera. I'm a</p> <p>20 principal with RMC Water and Environment. I am an</p> <p>21 expert in flow modeling sewer systems, in particular</p> <p>22 modeling of hydrology and hydraulics and filtration</p> <p>23 inflow. I have been doing this for 36 years.</p> <p>24 And I was brought in to prepare this</p> <p>25 report, which is focused on reviewing of the Office of</p> <p style="text-align: right;">Page 378</p>	<p>1 adjustments, which I'm going to detail. They started a</p> <p>2 little later and so forth.</p> <p>3 Okay. So what we did was to see if this</p> <p>4 is a correct assumption. If that line is the best that</p> <p>5 can be done to estimate what would have happened.</p> <p>6 So we did this by modeling the system.</p> <p>7 We looked at 14 different rainfall events. We</p> <p>8 calibrated a hydrologic model. All of that information</p> <p>9 is in my report, but the bottom line has been shown</p> <p>10 here.</p> <p>11 This red line represents what we modeled</p> <p>12 would have occurred. It starts with the 18th through</p> <p>13 the 19th and 20th. This part up through the peak here</p> <p>14 was actually recorded. And at the effluent meter and</p> <p>15 our data matches very closely. Our model matches very</p> <p>16 closely what actually happened on the 18th.</p> <p>17 This is the rainfall that occurred</p> <p>18 represented down here. So you can see the bulk of</p> <p>19 rainfall occurred on the 18th through about this point</p> <p>20 on the 19th, which is about when the spill started.</p> <p>21 What this shows also is in this blue line</p> <p>22 is the assumption that I showed on the previous slide,</p> <p>23 that the Office of Enforcement made. It is basically</p> <p>24 the dry-weather flow elevated by 4 MGD.</p> <p>25 So you can see that there is our analysis</p> <p style="text-align: right;">Page 380</p>
<p>1 Enforcement's of so-called pump station methodology of</p> <p>2 estimating the spill volumes. And I have presented</p> <p>3 this report, which I believe is Exhibit 32.</p> <p>4 Okay. I'm from San Diego. I guess I</p> <p>5 needed to say that, and I was sworn in earlier -- much</p> <p>6 earlier today.</p> <p>7 Okay. So what I did was to review the</p> <p>8 method that the Office of Enforcement has just</p> <p>9 presented, the pump station method, for calculating the</p> <p>10 spill volume, which led to their estimate of 1.1 or so</p> <p>11 million gallons.</p> <p>12 This graphic is from their</p> <p>13 presentation -- and let me see if this works. Here we</p> <p>14 go.</p> <p>15 Okay. As you recall, this is effluent as</p> <p>16 measured at the plant. And this line represents the</p> <p>17 flow that the Office of Enforcement estimated would</p> <p>18 have reached the plant if it had been able to be</p> <p>19 metered. Of course, we don't know that.</p> <p>20 So they went through how they developed</p> <p>21 that. They basically took the normal dry-weather</p> <p>22 pattern and elevated it by about 4 MGD, and they said</p> <p>23 that represents the flow they would have gotten</p> <p>24 there. And therefore the difference between these two</p> <p>25 curves is the volume of the spill, and with a few</p> <p style="text-align: right;">Page 379</p>	<p>1 based on the modeling of the rainfall, and the response</p> <p>2 to the system to it. It showed that the peak flow</p> <p>3 actually occurred very near when the pumps failed, and</p> <p>4 that it went down rather rapidly after that and picks</p> <p>5 up in here, is where we start to have effluent data</p> <p>6 again.</p> <p>7 What I'm showing in these dotted lines is</p> <p>8 simply the same information that the dry-weather flow</p> <p>9 subtracted. So we're just looking at the flow that has</p> <p>10 been assumed to be I and I, that came down from the</p> <p>11 watershed to reach the plant.</p> <p>12 Again, this is the rainfall. Our</p> <p>13 analysis is shown here in the dotted line. And again,</p> <p>14 the peak was reached around the time the failure</p> <p>15 occurred and went down pretty precipitously, because as</p> <p>16 you can see, it was very little rainfall after the</p> <p>17 spill started and it had only peaked a little bit the</p> <p>18 following day.</p> <p>19 The blue dash line is what the Office of</p> <p>20 Enforcement's assumption was for what the I and I was.</p> <p>21 And as I mentioned, it was basically a flat line at 4</p> <p>22 MGD. So they're assuming that the infiltration inflow</p> <p>23 was well above the normal dry-weather flow that</p> <p>24 occurred at a rate of 4 MGD throughout the whole spill</p> <p>25 period. Whereas our modeling shows that it was</p> <p style="text-align: right;">Page 381</p>

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1 obviously considerably lower.
2 The difference between their dotted line
3 and our dotted line is the major difference in the
4 spill estimate that we made. So our spill estimate was
5 about 400,000 gallons less than the Office of
6 Enforcement's estimate.
7 Now, if you recall the previous
8 testimony, the justification for using the constant I
9 and I, was related to the flooding. Our hydrograph
10 represents the flow that would have reached the plant
11 in the absence of the flooding, because it is based on
12 nonflooding events. We looked at 14 events. This was
13 the only one event where there was actually flooding
14 that occurred. So that is correct.
15 However, the reason that we believe this
16 is still the correct curve is because the floodwaters
17 that occurred during this event, were in the vicinity
18 of the plant only.
19 They were in a downstream area. They
20 were -- you know, we talked about 20 or so manholes
21 that were inundated. What is pretty basic is that
22 during the spill, those 20 manholes were spilling.
23 Flow was coming out of those manholes during that
24 period. So it didn't matter if they were inundated
25 with floodwater. The pressure driving the flow out of

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1 the system at that time.
2 So in other words, the hydraulic grade
3 line would back up from the plant, was causing those
4 manholes to spill, and so those floodwaters could get
5 in.
6 We looked very carefully at the
7 observations over the whole time line of what the
8 elevations of the backup of the plant were versus the
9 elevation of the floodwater. And at no time was there
10 floodwater over the rim of the manhole when those
11 manholes weren't spilling.
12 BY MS. THORME:
13 **Q Okay. So Mr. Sanghera, is it your**
14 **conclusion that the Office of Enforcement overestimated**
15 **the spill volume?**
16 A Yes, by 400,000, as I mentioned.
17 MS. THORME: Okay. That is the end of our
18 direct testimony. I ran out of time.
19 MR. YOUNG: Okay. Cross?
20 MS. MACEDO: Yes.
21
22 CROSS-EXAMINATION
23 BY MS. MACEDO:
24 **Q Does your model explain the --**
25 MR. YOUNG: Microphone.

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1 MS. MACEDO: Oh, sorry.
2 **Q Does your model explain the peaks in the**
3 **hydrograph on Monday after 10:00 a.m.?**
4 A Yes. Could you show us figure 6, please?
5 This is a graphic that shows the observed
6 effluent in blue, and our model flows in red. As I
7 mentioned -- and that's the rainfall here.
8 So this is obviously the spill period in
9 here. On the following day, your question is, does it
10 explain this spike or --
11 **Q No, I guess -- let me try it again.**
12 **Does your model explain the peaks on this**
13 **slide? Do --**
14 A Which peak?
15 **Q The -- I guess I should say --**
16 A This is due to the operational issues
17 with the pumps.
18 **Q After 10:00 on Monday?**
19 A After 10:00.
20 Okay. Yeah, so what happened there was
21 that you can see there were issues about pumps. I
22 don't know the details, obviously. But at this point,
23 the pumps come on and off. And then at this point,
24 some extra pumping was brought on-line to draw the
25 system down.

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1 I think my previous graph showed that the
2 model predicted during this period -- it will be
3 helpful to go back.
4 What you can see is my model line is the
5 red. So during this period in here, the flow is
6 exceeding -- the predicted flow is exceeding what was
7 being pumped, and I assume that was due to some issues
8 getting the pump back on. You can see, it is --
9 dramatically came up here, and they pumped down the
10 system at that point.
11 So most likely what was happening there
12 is that there was backup in the system during this
13 period of time. And then it was drained back during
14 this period of time.
15 And I know there is some evidence of some
16 overflows which were estimated by the District during
17 this period, in which -- so the model actually does
18 show very clearly that there was more flow coming in
19 the system than was being pumped for a few years there.
20 **Q Okay. Do you know if there was flooding**
21 **at GB13 -- or excuse me -- at GB15 on North Swing**
22 **Avenue at 9:30 p.m. on December 19th?**
23 A I believe that is one of the lowest line
24 manholes, and the flooding overflows occurred until
25 about 10:00 p.m. So I would say that was toward the

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<p>1 very end of it, but yes.</p> <p>2 MS. MACEDO: Okay. I have nothing further.</p> <p>3 MR. YOUNG: Any redirect?</p> <p>4 MS. THORME: No.</p> <p>5 MR. YOUNG: Okay. Mr. Jeffries?</p> <p>6 MR. JEFFRIES: Nothing.</p> <p>7 MR. YOUNG: Mr. Harris?</p> <p>8 MR. HARRIS: I wanted to go back to -- it's not</p> <p>9 this slide, but it was another one that the gentleman</p> <p>10 was using.</p> <p>11 THE WITNESS: The bottom one there?</p> <p>12 MR. HARRIS: Yeah, I'm just kind of curious,</p> <p>13 because it's more quality of a question.</p> <p>14 So the sewer plant is right next to the</p> <p>15 ocean, so it is essentially the bottom of the</p> <p>16 watershed. And typically after heavy rains and the</p> <p>17 flooding event, it tends to take a while for a</p> <p>18 watershed to drain. So you're still going to have a</p> <p>19 considerable amount of flooding?</p> <p>20 THE WITNESS: Well --</p> <p>21 MR. HARRIS: And it seems like your prediction</p> <p>22 or your model is reacting very quickly. It's like it</p> <p>23 is almost mimicking, you turn the rain off and all of a</p> <p>24 sudden the flow is decreasing.</p> <p>25 THE WITNESS: It is a little hard to tell on</p> <p style="text-align: right;">Page 386</p>	<p>1 nearby streams and, you know, there is a similarity in</p> <p>2 hydrology, and are you comparing the contrasting of</p> <p>3 those, and if so, do you have that information</p> <p>4 available?</p> <p>5 THE WITNESS: Well, you're correct that the</p> <p>6 hydrology of modeling infiltration inflow and sewer</p> <p>7 systems, is very analogous to the hydrology of runoff</p> <p>8 in creeks and from watersheds.</p> <p>9 Actually, you know, my background was</p> <p>10 originally in drainage and I adapted those technologies</p> <p>11 into I and I modeling and I was the first one to do</p> <p>12 that. And the techniques I have developed has been</p> <p>13 ingrained in all of the major modeling software now</p> <p>14 that is being used.</p> <p>15 So yes, what we did in this case was to</p> <p>16 calibrate the model based on specific response in the</p> <p>17 sewer systems. It is probably comparable to the</p> <p>18 response in some streams, but obviously each system has</p> <p>19 to be looked at and calibrated independently. We</p> <p>20 didn't -- we had no reason, obviously, to look at the</p> <p>21 stream flow.</p> <p>22 DR. WOLF: One more question.</p> <p>23 As part of your study that you were</p> <p>24 requested to perform, if you looked at gallon output on</p> <p>25 some of the data that was presented earlier -- I will</p> <p style="text-align: right;">Page 388</p>
<p>1 this time scale. I imagine there is probably a lag of</p> <p>2 two hours or so. I'm not sure. I have not studied</p> <p>3 that.</p> <p>4 What we did do is, like I said, we looked</p> <p>5 at 14 different events of varying sizes and on varying</p> <p>6 soil conditions, and the model reflects the rate of the</p> <p>7 increase of the flow and the rate of the recession of</p> <p>8 flow very accurately. And all of the calibrations</p> <p>9 information is presented in our report.</p> <p>10 MR. HARRIS: Okay. Thank you.</p> <p>11 MR. YOUNG: Dr. Wolf?</p> <p>12 DR. WOLF: On a similar vein, you mentioned</p> <p>13 that you looked at 14 other --</p> <p>14 THE WITNESS: Yes.</p> <p>15 DR. WOLF: -- examples.</p> <p>16 Now, if you looked at data, on what I</p> <p>17 will call drain ditches and streams, blue line streams</p> <p>18 nearby, and look at the effect of the watershed effect</p> <p>19 of drainage and the reduction of rainfall.</p> <p>20 To put it in different terms, similarly,</p> <p>21 I look at your graph, and there is a -- what I would</p> <p>22 characterize as a direct correlation between the stop</p> <p>23 of rain and a very rapid response in drop also of the</p> <p>24 sewer.</p> <p>25 Now, if you look at a hydrology model of</p> <p style="text-align: right;">Page 387</p>	<p>1 refer to the KSBY frame of the video -- which has a</p> <p>2 four-inch-diameter pipe that was showing outflow from</p> <p>3 that --</p> <p>4 THE WITNESS: Right.</p> <p>5 DR. WOLF: -- have you --</p> <p>6 THE WITNESS: No, I did not review any of that.</p> <p>7 I was -- I presented what I was asked to do.</p> <p>8 DR. WOLF: Okay. So likewise with the pump</p> <p>9 station opening where water was exiting that facility,</p> <p>10 that was not part of your scope of study?</p> <p>11 THE WITNESS: It would be included in the</p> <p>12 analysis because if the flow didn't get pumped out of</p> <p>13 the system, it was assumed that it overflowed or was</p> <p>14 stored.</p> <p>15 So again, there's -- one of the things</p> <p>16 that -- well, maybe I shouldn't be saying this. But my</p> <p>17 estimate was that, you know, that is the total volume</p> <p>18 under the hydrograph between those two hydrographs.</p> <p>19 There was an adjustment made for that for storage. We</p> <p>20 know the flow was pumped into slush lagoons.</p> <p>21 We know that it backs up into the</p> <p>22 collection system and gets stored. The District did</p> <p>23 some calculation on that regard. They took my numbers</p> <p>24 and then subtracted those storage volumes to come up</p> <p>25 with the final number of the 670,000 gallons.</p> <p style="text-align: right;">Page 389</p>

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1 DR. WOLF: So did you have a chance to review
2 the calculations that the District had done?
3 THE WITNESS: No, I did not independently
4 review those calculations. I was aware that -- you
5 know, how they did it. They used a model to calculate
6 the volume system. It was all reasonable.
7 And as far as 180,000 gallons that was
8 pumped to the sludge lagoon, I didn't -- you know, I
9 didn't go out and measure that or anything, but that
10 was -- that was being done by the District, and I
11 didn't independently verify it.
12 DR. WOLF: Okay. Thank you very much.
13 MR. YOUNG: Mr. Jordan?
14 MR. JORDAN: Nothing.
15 MR. YOUNG: Mr. Johnston?
16 MR. JOHNSTON: I just have one question.
17 You mentioned that the difference between
18 this event and the various rainfall events on which you
19 based your modeling for the -- to essentially to
20 replace the missing influent data, was that the earlier
21 events had not involved flooding.
22 THE WITNESS: As far as I know, there wasn't
23 flooding in --
24 MR. JOHNSTON: But that you didn't feel it
25 needed to be taken into account --

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1 THE WITNESS: Right.
2 MR. JOHNSTON: -- because essentially the --
3 there was no water coming in from those manholes so
4 there was stuff coming out?
5 THE WITNESS: Right. The only area that was
6 flooded, was the area that was spilling.
7 MR. JOHNSTON: Now, wasn't the plant itself
8 also flooded? And I seem to recall testimony that all
9 the sump pumps in the plant pumped into the system
10 itself for treatment?
11 THE WITNESS: Uh-huh, for some period of time I
12 believe.
13 MR. JOHNSTON: Did you take that volume of
14 water into account in your calculations?
15 THE WITNESS: Well, it does not have to be
16 because it's just being recirculated. Again, I'm only
17 looking at what is leaving the plant.
18 MR. JOHNSTON: No, I understand. But what I'm
19 getting at is -- because nobody disagrees on what was
20 leaving the plant.
21 THE WITNESS: Okay.
22 MR. JOHNSTON: The question was, what was
23 coming into that -- into the top of the plant --
24 THE WITNESS: Correct.
25 MR. JOHNSTON: -- or should have been coming

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1 into it --
2 THE WITNESS: Right.
3 MR. JOHNSTON: -- and what are those
4 projections.
5 And it strikes me that the floodwaters
6 that are entering sumps and being pumped into the plant
7 system, is part of that influent, part of that
8 projected influent --
9 THE WITNESS: Yes, it is --
10 MR. JOHNSTON: -- and is it something that
11 would not have existed in the nonflood situation, such
12 as what you were using as a basis for your modeling; is
13 that correct?
14 THE WITNESS: Well, we -- our models are
15 calibrated based on-site drainage. The rainfall that
16 falls on the plant site is included in the calibration,
17 so we are factoring that in, okay.
18 The flooding on the plant, the -- again,
19 there wouldn't be flooding into the -- the hydraulic
20 grade line was always higher than the flood levels, so
21 it's --
22 MR. JOHNSTON: So there wouldn't be -- there
23 wouldn't be --
24 THE WITNESS: Any --
25 MR. JOHNSTON: -- as a result of the flood,

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1 sump water being pumped into the system, that wouldn't
2 happen in normal rainfall events, where there is not
3 flooding in --
4 THE WITNESS: Well, in --
5 MR. JOHNSTON: -- in the plant?
6 THE WITNESS: -- normal rainfall events, there
7 is some pump flowing into the system.
8 MR. JOHNSTON: Right, but there's not flooding?
9 THE WITNESS: It -- right.
10 MR. JOHNSTON: Okay. So do we have any sense
11 of --
12 THE WITNESS: I don't have an estimate of that
13 volume.
14 MR. JOHNSTON: Okay. Thank you.
15 THE WITNESS: I know that it was not pumped
16 very long. I know they turned it off.
17 MR. JOHNSTON: How long was it pumped?
18 THE WITNESS: I think somebody else would have
19 to testify to that.
20 MR. JOHNSTON: Thank you.
21 THE WITNESS: Okay.
22 MR. YOUNG: Mr. Harris?
23 MR. HARRIS: You testified earlier that you --
24 your estimate is that the prosecution's estimate was
25 400 --

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1 THE WITNESS: 400,000 gallons.
2 MR. HARRIS: -- 400,000 gallons over?
3 THE WITNESS: Over.
4 MR. HARRIS: Did you do a detailed analysis of
5 their calculation?
6 THE WITNESS: Yeah, we looked at their
7 calculations and verified the way they did them and
8 understood the assumptions that they made.
9 MR. HARRIS: And I apologize if you already
10 stated this because it is getting late.
11 But in your opinion, what did they do
12 that created the overestimate of 400,000 gallons?
13 THE WITNESS: That -- that they assumed that
14 the infiltration inflow would be constant at 4 MGD for
15 the entire spill period. In other words, that they
16 didn't consider the rainfall pattern. We considered
17 that it had stopped raining, and that the flow came
18 down, therefore there would have been -- there was less
19 flow reaching the plant than they assumed. That is
20 really it in a nutshell.
21 MR. HARRIS: Okay. Thank you.
22 MR. YOUNG: Okay. Then let me ask you this --
23 did you ask him that?
24 MR. JEFFRIES: I don't know if you did bring up
25 that question.

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1 MR. YOUNG: Can we put up an exhibit, Exhibit
2 448? Do you have that?
3 MS. THORME: This is 44.
4 MR. YOUNG: Of what Mr. Buffleben had testified
5 to.
6 MS. MACEDO: An exhibit or slide?
7 MS. JAHR: Are you talking about Exhibit 48 or
8 49 with the pictures?
9 MR. YOUNG: It had -- he had graphs, and he had
10 4 MGD at one point, was the last measurement and then
11 there was a break.
12 THE WITNESS: I think that was the first slide
13 that I showed.
14 MR. YOUNG: It might have been.
15 THE WITNESS: Yeah.
16 MR. YOUNG: I wrote down 44 and 48 on the
17 bottom right-hand corner. And there is another --
18 MS. MACEDO: Is it that one?
19 THE WITNESS: There is one that shows --
20 MR. YOUNG: Right. So --
21 MS. MACEDO: Which one do you want?
22 THE WITNESS: Yeah.
23 MR. HARRIS: Go to the next one.
24 MS. MACEDO: This one?
25 MR. YOUNG: Okay. Well, we can go back. I

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1 just --
2 MR. HARRIS: He had one where, I think he took
3 the -- I think, they took the base flow, and added it
4 to the --
5 MR. YOUNG: Yeah, he added something.
6 MS. MACEDO: Oh, you want --
7 THE WITNESS: It was the previous slide, right
8 there.
9 MS. MACEDO: Oh, you want the green?
10 MR. YOUNG: Yeah.
11 MS. MACEDO: There you go.
12 MR. YOUNG: So why is it incorrect to make the
13 assumption that the flow, the I and I into the plant
14 is --
15 THE WITNESS: Constant.
16 MR. YOUNG: -- constant in just connecting up
17 the 8.4 for at 10:30 like he did, and then, you know,
18 when everything was up and running again, you still
19 have got the same kind of treatment through the
20 plant --
21 THE WITNESS: Well --
22 MR. YOUNG: -- and doesn't that seem to
23 indicate that you have got the same amount of water
24 coming into it?
25 THE WITNESS: No, it --

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1 MR. YOUNG: What does it indicate then?
2 THE WITNESS: Well, what does what indicate?
3 MR. YOUNG: The fact that when they get
4 everything up and running again, they come up to just
5 about the same.
6 THE WITNESS: It could be nothing. It could be
7 coincidence. Basically, if you look at -- can you go
8 back to my Exhibit 6?
9 Okay. So what happens in a sewer system
10 when it rains, is the flow goes up. It's just like it
11 does in a creek. So when it stops raining, it goes
12 down.
13 And so what this red line is showing is
14 what our model says would have happened. It reaches a
15 peak right about the time of the pump failure, which is
16 represented by the blue line shooting down. And then
17 it would have come down like this (indicating). They
18 assume that it stayed up like this (indicating).
19 What this is, is emptying the drainage.
20 The emptying is the stored water from the collection
21 system. And also a draining back -- by this time, the
22 spill had stopped and the ground was very saturated and
23 it was -- they were drawing it back in.
24 Once the sewer system had caught up and
25 then the levels in the pipes had gone down, then there

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1 was a gradient with the groundwater, and that
2 groundwater comes in. And so that is why this is as
3 high as it is back here.
4 MR. YOUNG: Okay. Mr. Harris?
5 MR. HARRIS: Did you -- as part of your
6 modeling efforts, did you calculate the storage volume
7 of main trump lines and the lateral stuff to the point
8 where the spills occurred out of the manhole covers?
9 THE WITNESS: That was done by the District.
10 MR. HARRIS: And do you know what that number
11 is --
12 THE WITNESS: It's --
13 MR. HARRIS: -- in terms of what the storage
14 capacity was?
15 THE WITNESS: It was it was about 200,000
16 gallons.
17 MR. HARRIS: So up to the point where the
18 manholes were popping --
19 THE WITNESS: Well --
20 MR. HARRIS: -- so to speak, it was -- the
21 storage was 200,000 gallons?
22 THE WITNESS: Well, there was an initial number
23 of 180,000 gallons that the District presented, I
24 think, in some earlier submittals. That was the
25 storage from when the spill started, the pipes were

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1 about half full or so, up through the point where the
2 spill would start. And that was used to estimate that
3 it would take about a half an hour, and it was about
4 180,000 gallons.
5 Okay. Subsequent to that, in discussions
6 with me, I said, well, the levels kept rising above
7 that. There was additional storage in the system.
8 Just because the spill started, you know -- they lost
9 the head on top of that.
10 So they did another assessment. They
11 added the manhole volumes, and that ended up, I think
12 being a little closer to 200,000 or so.
13 MR. HARRIS: So if you took the maximum at the
14 peak, right when the rain shut off, the maximum storage
15 that could be calculated for the laterals and the trump
16 lines, would have been --
17 THE WITNESS: The storage above --
18 MR. HARRIS: -- 200,000?
19 THE WITNESS: -- yes, the storage above that.
20 MR. HARRIS: I mean when the sewer plant, all
21 the way to the very last manhole that is popping in the
22 system, the highest elevation, and if you look at all
23 trump lines and all the laterals, what would your
24 storage be at that point?
25 THE WITNESS: Well, that is what they would --

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1 MR. HARRIS: A couple hundred thousand?
2 THE WITNESS: A couple hundred thousand, yes.
3 MR. HARRIS: So on your graph though, you were
4 talking about storage. But if you look at your blue
5 lines -- the blue line, which was the F1. It's really
6 low, right?
7 THE WITNESS: Yeah.
8 MR. HARRIS: And then all of a sudden, once the
9 plant you said started to empty the storage, it goes
10 from almost nothing, back up to almost --
11 THE WITNESS: This is still spilling --
12 MR. HARRIS: -- seven and a
13 half.
14 THE WITNESS: -- this is still spilling during
15 this whole period. As long as my red line, the flow
16 coming in is greater than the flow going out, the spill
17 is still occurring.
18 Okay. And then at this point, what it is
19 saying is that the amount of flow coming into the plant
20 is equal to what they are pumping.
21 Okay. Now, at this point though, the
22 system is full, so they have to continue -- and
23 actually at this point, for -- between 6:00 p.m. and
24 10:00 p.m., there was some small amount of overflow
25 still occurring because the system was still elevated,

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1 okay.
2 So by about 10:00 is when the spill
3 stopped. And they had to keep pumping at a high level
4 to draw down the stored volume, and as I mentioned,
5 to -- they were essentially draining the soils in the
6 vicinity. Even after the spill stopped, there was a
7 lot of groundwater in the trenches and the sewer
8 trenches and the ground around the sewers that's still
9 near the ground level. And the hydraulic gray line is
10 being dropped dramatically at this point, because it's
11 caught up, and then that creates a gradient. And so
12 the sewer comes to the drain, and so they have to keep
13 pumping and pumping until they actually are draining
14 the trenches, as well as the water in the sewer.
15 And they are draining the sewer down to a
16 very low value. Whereas, when they started, it was at
17 a high value, and the pipes were fuller. But they
18 dropped it down actually, to the point where they are
19 completely caught up in the middle of the night when
20 flows are very low, and the depths in the sewers are
21 very low at that point. So that is additional volume
22 that had to be pumped down.
23 MR. HARRIS: Okay. Thank you.
24 THE WITNESS: Okay.
25 MR. YOUNG: Any other board questions?

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1 Okay. Thank you.
2 MR. JEFFRIES: I do have one.
3 MR. YOUNG: Mr. Jeffries?
4 MR. JEFFRIES: How long do you think that the
5 overflows from the manholes duration time were? Did
6 you calculate that?
7 THE WITNESS: Well, we -- I mean, this is
8 evidence that was from the 11:00 to 10:00 p.m. --
9 MR. JEFFRIES: Right.
10 THE WITNESS: -- and that is consistent with
11 this, and what we show is --
12 MR. JEFFRIES: Well, let me just --
13 THE WITNESS: Yes, go ahead.
14 MR. JEFFRIES: -- go a little bit further,
15 because there was evidence shown that the next day,
16 there was still --
17 THE WITNESS: Okay.
18 MR. JEFFRIES: -- the manholes were still
19 showing there was discharge from different manholes?
20 THE WITNESS: Yes.
21 MR. JEFFRIES: And so to me it looks -- and you
22 said that you were trying to dispute there was a
23 straight line of the numbers, because it had dropped.
24 Well, if that was the case, then why were we still
25 having discharge from those manholes?

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1 THE WITNESS: Okay. If -- you're talking about
2 the 20th?
3 MR. JEFFRIES: The following day.
4 THE WITNESS: The following day.
5 So here's the following day. What the
6 model shows in the effluent, is that right around that
7 point in time, that should be sometime after midnight
8 maybe. I'm not sure of the exact time shown here, but
9 they are about equal, okay. And they have caught up
10 basically.
11 Now, here you can see rainfall -- the
12 colors a little funny -- but it did rain on the next
13 day, and the prosecution team mentioned that as well.
14 And that is the rainfall there. So that causes us
15 to -- that caused the flow to increase a little more
16 than it would have.
17 You can see that -- well, you probably
18 can't see, but this is the normal dry-weather flow line
19 here. And so the flow didn't get back to the normal
20 dry-flow line because of groundwater infiltration.
21 But then at this point, there is a little
22 bit of rainfall and infiltration as well, and that is
23 causing this to rise. And as I mentioned earlier, the
24 reason that there were some overflows on that morning,
25 is pretty evident here that the flows exceeded what was

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1 being pumped.
2 And I can't testify to what was going on
3 here, but it is pretty clear to me that there was some
4 problems getting some pumping on-line because
5 immediately it shot right up. So something happened at
6 that point, and they got caught up and at that point
7 they drained the system back down.
8 So I did not estimate the volume of the
9 spill on the 20th, okay. That was not part of what I
10 did. That was estimated by the District based on their
11 observations of flows out of the manholes.
12 MR. JEFFRIES: Now, the information that you
13 calculated was provided by the District?
14 THE WITNESS: Only the storage volumes. I
15 calculated -- I did the modeling, and I calculated the
16 amount of flow that would have overflowed if none of it
17 had been stored, which was about 1.1 million gallons,
18 okay?
19 And so you start with that. And then we
20 know that 180,000 gallons was pumped out into the
21 sludge. So you subtract that. We know there was
22 some -- obviously, the filling of the collection system
23 overflow. That later came back and got treated, and
24 that is about 200,000.
25 So those are the two major factors that

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1 go from the 1.1 million that I computed, to the
2 approximately 700,000 gallons you have to subtract in
3 that storage.
4 And the storage -- again, the storage
5 volume estimates were done by the District. That is
6 the only part of this analysis that I used District
7 information for.
8 MR. JEFFRIES: I understand. But the
9 prosecution team showed that the analysis done by the
10 District probably -- or might be erroneous because of
11 the graphs and the information of the manholes that
12 shows the discharge.
13 THE WITNESS: Okay. Let's be clear on that.
14 Now, the District did a completely separate calculation
15 of overflows based on manhole-by-manhole estimates,
16 okay.
17 MR. JEFFRIES: Right. Did you use --
18 THE WITNESS: I didn't use any of that.
19 MR. JEFFRIES: Okay.
20 THE WITNESS: -- except for a minor amount of
21 it for -- well, for the spill on the 20th, okay. I did
22 on -- you were just asking about the next day.
23 MR. JEFFRIES: Right.
24 THE WITNESS: And the spill between 6:00 p.m.
25 and 10:00 p.m. when the hydraulic grade line was very

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<p>1 low. By then we had caught up, and so my lines had 2 crossed. So it is a very small amount, okay. It 3 doesn't affect the results that much. 4 What I did use from the District that is 5 important here, is the volume pumped to the sludge 6 drying beds, which have nothing to do with the -- 7 anything that the prosecution team is commenting on. 8 In fact, I don't think there is any dispute about this 9 volume, and I have not really heard anything that 10 question these volumes as well. 11 MR. JEFFRIES: I don't think the 180,000 is in 12 dispute. 13 THE WITNESS: Right. And the storage in the 14 system -- well, we have not heard any dispute on that. 15 I think that was generally accepted. 16 What the prosecution team did was to 17 allow for that by starting the calculations at noon 18 instead of at 10:30, which is a very incorrect way to 19 do -- we actually use pipe configurations and 20 elevations to compute this volume. 21 MR. JEFFRIES: All right. Thank you. 22 THE WITNESS: Okay. 23 MR. YOUNG: Mr. Harris? 24 MR. HARRIS: Just a quick question. 25 The 674 is your model calculated spill</p> <p style="text-align: right;">Page 406</p>	<p>1 is -- the District's estimate is spill on the following 2 day, I believe is the same number that the prosecution 3 team used for that. So I don't think that -- they 4 mentioned that they thought it was higher, but I never 5 saw any other numbers. 6 DR. WOLF: Okay. Thank you. 7 MR. YOUNG: Okay. So that completes this 8 witness. 9 MS. THORME: Thank you, again. He has to run 10 to catch a flight. 11 MR. YOUNG: Okay. 12 MS. THORME: So can we take a dinner break, 13 possibly? 14 MS. MACEDO: No problem. 15 MR. JORDAN: No. 16 MS. THORME: Yes. 17 MS. MACEDO: I'm fine with it. 18 (Discussion held off the record.) 19 (Dinner break.) 20 MR. YOUNG: All right. Let's go back on the 21 record. 22 We will begin with our public comment 23 cards. Everyone will have three minutes to address the 24 board. 25 Allen Mayer (phonetic), are you still</p> <p style="text-align: right;">Page 408</p>
<p>1 volume? 2 THE WITNESS: Okay. Mostly what I did was this 3 number, okay (indicating)? These numbers -- 4 MR. HARRIS: So estimate of the spill is one 5 million -- 6 THE WITNESS: No. No, that is not the estimate 7 of the spill. That is the estimate of the difference 8 between the influent and effluent between this period 9 of time. 10 We know that there was some storage, and 11 so these are subtractive values from that. There is 12 also some additional values for the spill on the next 13 day. 14 MR. HARRIS: So what is your total volume 15 spill? 16 THE WITNESS: Right here, 600 -- 17 MR. HARRIS: Oh, okay. You've answered my 18 question. 19 THE WITNESS: -- and 74. 20 MR. HARRIS: All right. Thank you. 21 MR. YOUNG: Dr. Wolf? 22 DR. WOLF: It says -- to be clear, your 23 400,000-gallon difference, does include the spill of 24 the following day or it does not? 25 THE WITNESS: Yes. I think the -- our estimate</p> <p style="text-align: right;">Page 407</p>	<p>1 here? 2 Okay. He's not. 3 Okay. Greg Cobb? 4 MR. COBB: Yes. 5 MR. YOUNG: Okay. He will be followed by Karen 6 White, and then I don't see Gordon Henley. Gordon 7 Henley is not here, is he? 8 MR. JEFFRIES: He was here earlier. 9 MR. YOUNG: He's not here now. And then Joe 10 Shackler. Okay. That will be the third speaker. 11 Okay. 12 UNIDENTIFIED SPEAKER: There should be one up 13 there for Barbara Mann, too. 14 MR. YOUNG: Pardon? 15 UNIDENTIFIED SPEAKER: Barbara Mann. 16 MR. YOUNG: Yeah, I'm just reading the next 17 three in line, so people know when they're going to 18 speak. 19 Okay. So folks, three minutes. Go 20 ahead. 21 MR. COBB: I want to thank the board for -- 22 MR. HARRIS: Is the microphone on? 23 MR. YOUNG: It is. 24 Okay. Sir, go ahead and state your name 25 and address.</p> <p style="text-align: right;">Page 409</p>

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<p>1 MR. COBB: My name is Greg Cobb. I live at 559 2 Honolulu Avenue in Oceano. And I'm about 300 feet from 3 the front entrance of the Sanitation District Plant, so 4 I have firsthand knowledge of what happened on the day 5 of the 19th, obviously. 6 And the first thing I'd like to comment 7 about is that plant is built on a very low-lying area 8 that is surrounded by water. And in my understanding 9 of when I toured the plant about six months ago, there 10 is 40-foot-deep water well around the headworks area, 11 because the water table in that area is very high. 12 It's within three or four feet of grade on every time 13 of the year anymore. So infiltration of water into 14 that area is, I'm assuming, pretty common. 15 It's obvious from the testimony that the 16 plant has major malfunctions. In my opinion, they were 17 avoidable had certain maintenance things been done. 18 I don't believe that this rain event -- I 19 have been there almost 20 years -- I don't see that 20 this rain event was anything more than a seven- or a 21 ten-year event. We have had rain like that numerous 22 times in the past. It's never caused these kinds of 23 problems before. And I was just sometimes 24 flabbergasted to find out about the amount of problems 25 and lack of pump operation and numerous things at the</p> <p style="text-align: right;">Page 410</p>	<p>1 six hours prior to the event at approximately 10:30 2 a.m. that morning. So there is substantial amount of I 3 and I that probably entered the system. 4 The 8.4 MGD that was stated when the 5 plant failed at 10:30. My witness account of that was 6 that the water coming out of the manholes, even though 7 the street had water over the top of it, was almost 8 negligible. I couldn't even perceive it was a problem 9 at that time. 10 The peak of the water coming out of the 11 flow rate, seemed to happen about 2:00 -- 1:30 or 2:00. 12 That is when the manholes were substantially 13 overflowing. It was very obvious. It was up at -- to 14 well over -- I think off the charts. It had shown it 15 was like 275 gallons per minute, I believe. That 16 manhole from my house was spilling more than that at 17 2:00 in the afternoon. So I -- 18 MR. YOUNG: Mr. Cobb, your three minutes is up. 19 Can you just conclude it? 20 MR. COBB: All right. I'd like to conclude 21 that the peak of that outflow was more like 10 MGD, and 22 their constant MGD was probably a more accurate 23 representation. Thank you very much. 24 MR. YOUNG: Thank you for your comments. 25 Karen White?</p> <p style="text-align: right;">Page 412</p>
<p>1 plant in all of this testimony today. 2 I do want to thank all the operators at 3 the plant, at the time of the spill. It sounds like 4 they did a heck of a job trying to contain the spill in 5 getting that plant up and running. 6 One of the things I do want to comment 7 about is I didn't have a nice comment at the end of all 8 the testimony today, but obviously it's getting late 9 and a lot of us have families and we would like to go 10 home. 11 One of the things I would like to comment 12 about is on the IRNC report, the person that 13 testified -- I don't remember his name -- stated there 14 was no floodwater over any of the manholes prior to the 15 event of the plant failure when the pump shut down. 16 And that is absolutely not true. 17 In our neighborhood of that area, there 18 is probably at least five or six manholes. And there 19 is one directly in front of my house. And those 20 manholes are -- it only takes half an inch of rain to 21 cover those manholes. 22 And at that period in time, those 23 manholes were probably under water. I know on Security 24 Court and in front of my house and out on Aloha, those 25 manholes were probably underwater for hours, five or</p> <p style="text-align: right;">Page 411</p>	<p>1 MS. WHITE: Good evening. Karen White, 1566 2 (inaudible) Lane, Halcyon, H-a-l-c-y-o-n. 3 I am a member of the Community District 4 Service, but I'm speaking only for myself tonight. 5 I heard nothing -- I have been here all 6 day and I have heard nothing about what caused the 7 flood. The flood wasn't caused by the sewer plant. 8 The flood was not caused by the manholes overflowing. 9 The flood was caused by the Oceano Lagoon at Meadow 10 Creek, which runs in Grover Beach and Arroyo Grande and 11 the back of Arroyo Grande. That was the water that 12 came in and flooded the plant. You have not discussed 13 that at all. 14 Now, there would not have been a flood 15 had San Luis Obispo County Flood Control done their 16 job. You're not looking at them. But they are the 17 ones that failed to open up the floodgate, the weir -- 18 it's really a weir -- between the Oceano Lagoon and the 19 lower swamp area down there where the people live and 20 where the plant is. It's all swamp, but -- and you 21 wonder why the water started disappearing. 22 Well, at 3:00 a.m., approximately, on 23 Monday morning when the tide went out, they got the 24 weir open, and they drained the water into the creek 25 channel right at the ocean. Nobody is looking at any</p> <p style="text-align: right;">Page 413</p>

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<p>1 of that. And that is all a major contributing factor. 2 There wouldn't have been a flood. 3 And the lady that I would object to 4 talking today who said that there would have been a 5 challenge with the sewer plant with the flood. No, 6 there wouldn't have been, because even if the pump had 7 shorted out, they would be able to open that valve that 8 was not buried by sewer water, because it was not the 9 rain. It was not the Arroyo Grande Creek. It was not 10 the manholes. All that was superfluous, it was the 11 lagoon. The lagoon just completely rose. Anyway -- 12 and if you want to know more about that, go to 101A 13 (phonetic). 14 And I think it's really sad that you're 15 considering taking 1.3 plus million dollars from me, 16 because that is my money. And it is my money that 17 should go to correct the Oceano Lagoon and should 18 correct the weir. And should correct the water coming 19 from the San Luis Hills into Meadow Creek that runs 20 into the lagoon that comes clear to Oceano. 21 And without that, we're going to have 22 another flood, and I will guarantee the sewer plant 23 will be flooded again, and they're going to be in 24 trouble. But it is not their fault. 25 Anyway, that is my complaint and thank</p> <p style="text-align: right;">Page 414</p>	<p>1 is waiting for me. So what you're doing is, now you're 2 saying that We're going to fine you for something else. 3 That just does not make sense to me. 4 The 4 million or the 5 million dollars, 5 that is our money. The ability to pay, does not make 6 any difference. That is our money. The rates -- 7 talking about the rates. That is our money. 8 I gave you a copy of what I wanted to 9 read tonight. You each have it. I want to pick a 10 couple of paragraphs out of it, and this is the main 11 one. 12 Another concern is the loss of wildlife 13 habitat for most of the Meadow Creek Lagoon. Not from 14 the sewage spill, but from progressive siltation 15 buildup. 16 Not long ago there was an abundance of 17 egret tarons (phonetic) and other rare birds. In 18 addition to the birds, there was an abundance of 19 turtles, snakes and other water creatures. The birds 20 are no longer there. The water creatures, they are 21 gone. 22 So if the State parks wants to protect 23 the creatures in the lagoon, they failed. There has 24 been no maintenance. We don't need more studies. We 25 don't need consultants. How about taking the time and</p> <p style="text-align: right;">Page 416</p>
<p>1 you. 2 MR. YOUNG: Thank you for your comments, 3 Ms. White. 4 Joe Sharker? And then is Brad Snook 5 here? 6 MR. SNOOK: Here. 7 MR. YOUNG: Okay. And then is Jennifer Josack 8 (phonetic) here? 9 UNIDENTIFIED SPEAKER: She was here. 10 MR. YOUNG: Okay. She's gone? 11 UNIDENTIFIED SPEAKER: Yeah. 12 MR. YOUNG: Okay. 13 MR. SHARKER: Joe Sharker (phonetic), 577 14 Security Court. I did take the oath. 15 It's not the District. It's the owners 16 of the sanitation plant, Arroyo Grande, Grover Beach 17 and UCSD, we are the owners, and you are attempting to 18 fine us. We are the owners. 19 I respect all of you that are here. I 20 respect all the work that you're doing. You're all on 21 salary. We, as taxpayers, we pay you. We pay -- we're 22 paying the prosecutor. We pay the defense. We pay our 23 taxes. 24 I took a day off of work to attend here. 25 It's a travesty the way you set us at 8:00. My family</p> <p style="text-align: right;">Page 415</p>	<p>1 go down to see -- as Karen White just said -- what the 2 main problem of the flooding is -- the County, State 3 parks. 4 Of course, the sanitation plant is no 5 help, because they didn't do certain things right. But 6 you're missing the boat. You've got your head in the 7 sand. We need agencies to come together. I challenge 8 you to get with all the agencies involved. You're 9 concerned about water quality. Go down and look what 10 it has done to the lagoon. It has driven all the 11 habitat -- I used to have all water in front of my 12 house. There is none there now. It is all reeds and 13 silt build up. 14 As a result, water cannot flow out of the 15 island. And if it even did make it to the lagoon, the 16 water that goes into the Arroyo Grande Creek, it can't 17 flow anymore. You guys are -- you're on the wrong 18 track. You're taking an easy approach. But you're on 19 the wrong track. Open up your eyes. Take off these 20 blinders. My goodness, this is a big problem. 21 And as Karen said, it is going to flood 22 again, unless something is done to the lagoon. Unless 23 something is done to allow water to flow into the 24 lagoon from the island. Thank you. 25 MR. YOUNG: Thank you for your comments,</p> <p style="text-align: right;">Page 417</p>

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<p>1 Mr. Shackler. 2 Okay. Brad Snook? Is Shelly Hamilton 3 here? No? Okay, Barbara Mann? 4 MS. MANN: Here. 5 MR. YOUNG: Okay. Jeff Pienak (phonetic)? 6 UNIDENTIFIED SPEAKER: He's gone. 7 MR. YOUNG: He's gone? Okay. 8 MR. SNOOK: My name is Brad Snook. I'm the 9 chairman of our San Luis Obispo County Chapter of the 10 Surf Rider Foundation. 11 I would say that the discharge permit 12 that the Sanitation District that they hold, is a 13 privilege. And when there is a violation that happens 14 and sewage discharges into the ocean, that is an 15 illegal act. So the District needs to be held to an 16 illegal act. 17 This is the first opportunity for our 18 chapter to speak to a government agency that is 19 interested in quantifying and publicly disclosing the 20 effects of mismanagement in the South San Luis County 21 Sanitation District. 22 For over a year and a half, our chapter 23 has been asking both the District board of directors 24 and the stakeholder city councils to authorize an 25 independent investigation of potential malfeasances of</p> <p style="text-align: right;">Page 418</p>	<p>1 the many reports of comprised environmental standards 2 and ethical deficiencies of District leadership, have 3 given the public many opportunities to intervene and 4 demand reform. However, the public's voice has been a 5 whisper, and that has allowed the District leadership 6 to continue the snowballing effect that will lead to 7 this fine and potentially to many other claims, against 8 the District and its repairs. 9 How can this happen? Surfrider 10 Foundation has been asking for an investigation for one 11 and a half years. And somebody needs to find out 12 whether malfeasance played a role in the South San Luis 13 Obispo County Sanitation District. 14 If you support reduced fines in this 15 case, you compromise the legislature and management 16 with sewage discharge in our county and in our state. 17 If you support a reduced fine in this case, you prevent 18 another opportunity for the District taxpayers to hold 19 the sanitation District responsible. 20 Surfrider Foundation requests you uphold 21 the fine set by the Water Board, not the prosecutors. 22 We also ask for your assistance in establishing an SEP 23 (phonetic), whereby one half of the fine can be passed 24 to the County for our water quality testing. 25 After all, with the District ocean --</p> <p style="text-align: right;">Page 420</p>
<p>1 our wastewater treatment plant. 2 Our request for an investigation would 3 make good, logical sense following public disclosures 4 by whistle-blowers and a thorough, transparent 5 investigation of operational and financial actions that 6 would benefit both the District and the public they 7 serve. 8 Trust is important where environmental 9 health is concerned. If beachgoers can't trust the way 10 water quality is measured, how can we trust the actions 11 of those responsible for managing it. 12 With the sanitation District ignoring 13 three separate investigations by a private 14 investigator, the San Luis Obispo County civil grand 15 jury and by an internally appointed peer review 16 committee, all recommending the change in leadership, 17 are acknowledging the perception problem with multiple 18 conflictive roles of the Wallace Group that South San 19 Luis Obispo County Sanitation District board of 20 directors has established that leadership is 21 untouchable. 22 I believe the amount of time afforded the 23 public, the many reports of Oceano homes being flooded 24 by sewage, the critical reports of inadequate 25 leadership and potential mismanagement at the District,</p> <p style="text-align: right;">Page 419</p>	<p>1 beachgoers in San Luis Bay from around the world, have 2 suffered compromised environmental health and until the 3 water quality can be measured on a more realtime basis, 4 the County's program represents the well established 5 standard. 6 MR. YOUNG: Can you please conclude? 7 MR. SNOOK: I will. 8 There is another more general point to be 9 made regarding sewage plants that are built in flood 10 plains, and/or within a tsunami zone. 11 MR. YOUNG: Well, conclusion -- 12 MR. SNOOK: Oh, okay. 13 MR. YOUNG: -- mean, wrap it up in a sentence 14 or two. 15 MR. SNOOK: Okay. Doesn't a plant that meets 16 either of these criteria, lose its ability to claim a 17 spill due to flooding was unavoidable? Thank you. 18 MR. YOUNG: All right. Thank you for your 19 comments, Mr. Snook. 20 Barbara Mann? And then Linda Austin, are 21 you here? 22 MS. AUSTIN: Yes. 23 MR. YOUNG: Okay. Then Marilee Highman 24 (phonetic)? Okay. Those are our last speakers. 25 MS. MANN: My name is Barbara Mann. I live at</p> <p style="text-align: right;">Page 421</p>

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<p>1 1630 Front Street in Oceano. I was a member of the 2 Oceano Community Service District for 11 years. I have 3 been gone now for two years, so I do know a little bit 4 about a few things. 5 I just want to point out a couple of 6 items to you folks, that I hope you will take into 7 consideration when you're looking at the amount of the 8 fine. I would hope that you would reduce it. 9 Number one: The Sand District, as we 10 lovingly call it, is owned by Oceano, Grover Beach and 11 Arroyo Grande. 12 Now, it's not owned by John Wallace. 13 It's not owned by the Wallace Group. It's owned by the 14 people that live in these three communities. It's 15 ours. We -- you know, the statement was made here 16 today that they are going to make an example of the 17 Sand District. Well, that is real great, if the Sand 18 District was one person. It isn't. 19 The person you're going to be hurting, 20 are the little people who will be paying further rate 21 increase, because I'm sure the way you know -- you have 22 looked at their budget and things like that, they have 23 major projects every year. Those are put on there and 24 are the big things they hope to do this year. 25 But they also have 10- to</p> <p style="text-align: right;">Page 422</p>	<p>1 all these years and, you know, the first incident was 2 because of this big flood. I was present during the 3 flood. I had my business property. Some of our -- 4 some rental properties we manage were affected by the 5 flood. My friends and neighbors had their homes 6 affected by the flood. I was in the floodwaters. They 7 were in the floodwaters. We were all out there. No 8 one got sick. I was never aware of anyone becoming 9 ill. 10 And in all my 60 years there, I have 11 never seen a flood like that happen. So I -- that is 12 kind of what I want you to take into consideration, is 13 the amount of water that came into the neighborhood 14 that day. And we have heard some of the reasons here 15 why that happened. 16 And I just don't think it's right to take 17 this and put all the blame on this one entity, the 18 Sanitation District, because what it's doing is what 19 we've heard is it's affecting all of us, the residents 20 who live in Oceano and Arroyo Grande and Grover Beach. 21 And there was a lot of contributing 22 factors that -- you know, to the flood. And we heard 23 here today one of the things is that the Sanitation 24 District has five million in reserves, so there is an 25 ability to pay. That's fine, but those reserves are --</p> <p style="text-align: right;">Page 424</p>
<p>1 15-year-long-range plans, so you're trying to punish us 2 now for saving our money to be able to take care of all 3 these projects that we want to do. 4 So say, you fine us the big amount of 5 money and we have to pay it, then what happens next 6 year when some major budget items don't get done? We 7 will be right back here again. And it is not right. 8 I really hope that you sit and think what 9 you're doing. But to decide, oh, I am going to come 10 down really hard. You know, we're going to set an 11 example. Be a hero for the State of California. That 12 is not right. You know it isn't right. And I just 13 really hope that you stop and think about what you're 14 doing. 15 I appreciate your time and I wish you the 16 best. 17 MR. YOUNG: Thank you for your comments, 18 Ms. Mann. 19 Linda Austin? 20 MS. AUSTIN: My name is Linda Austin, and I 21 live at 636 Air Park in Oceano. I'm a lifelong Oceano 22 resident. I have been a neighbor of the sewer plant 23 since it was built. And I'm just here to speak about 24 the sewer plant as our neighbor. 25 It has always been a good neighbor for</p> <p style="text-align: right;">Page 423</p>	<p>1 like I said, it's our money to keep the plant going for 2 upgrades and repairs and long-range plans, and we want 3 to keep that money to keep the plant going because it's 4 in our best interest. We live there, and so we want a 5 plant that runs effectively and smoothly and is in good 6 working shape. 7 So I'm just -- I would like to ask that 8 you would really take into consideration all these 9 things in this fine that I feel is extremely excessive. 10 Thank you very much. 11 MR. YOUNG: Thank you for your comments, 12 Ms. Austin. 13 Marilee Hyman (phonetic)? 14 MS. HYMAN: I'm Marilee Hyman, Shoreline Drive, 15 Pismo Beach. 16 Mr. Chairman and members of the board, 17 you find a nicety (phonetic) for wastewater spills at 18 the same time we were actually correcting the problem 19 and struggling with the 18 million dollars cost to 20 upgrade. So I'm sympathetic to how much your fines can 21 hurt a community. 22 An open statement here said you have the 23 power to do one of three things: Accept, reject or 24 modify the penalty. 25 For accept, there has been enough doubt</p> <p style="text-align: right;">Page 425</p>

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<p>1 cast on the accuracy of some of the calculations to not 2 just accept the penalty as proposed. For example, are 3 you really convinced that an analysis done with a 4 two-year-old information is adequate? And the 5 presenter projected to a certainty, he didn't approve 6 it. I can project some figures, too. He started with 7 2009 with 6 million; 2010, 5 million. Keep going to 8 2011 for -- you know, in a couple of years, you're 9 going to take the lion's share of that cash that they 10 have. And two years can take you from a surplus to a 11 deficit in today's economy.</p> <p>12 Second, reject. It's hard to reject the 13 staff's recommendation outright. Especially with the 14 State's high priority of wanting to make a punitive 15 point. The State wants the District to upgrade 16 projects soon. I don't really see the direct nexus 17 with the improvements that prevented the December 18 event. And you don't really need to make a sacrificial 19 lamb to make a point here. It's well known that you're 20 a tough bunch, and that you keep water clean. It's 21 important.</p> <p>22 Third, modify. But you can modify the 23 penalty through a consideration of justice and other 24 factors. Take the cash. That cash came out of the 25 pockets of the poor. A large fine hurts a poor</p> <p style="text-align: right;">Page 426</p>	<p>1 That concludes our testimony of 2 interested persons. So we will now resume back to, I 3 think -- was Mr. Buffleben finished with his testimony? 4 MS. MACEDO: He, I believe, was ready for 5 cross. 6 MR. YOUNG: For cross. Okay.</p> <p>7 8 CROSS-EXAMINATION 9 BY MS. THORME: 10 Q Good evening, Dr. Buffleben. I'm sorry 11 for the break in between your testimony. 12 So you had testified that you thought 13 that the Office of Enforcement prosecution team's 14 volume estimate was a reasonable estimate; is that 15 correct. 16 A That's correct. 17 Q And no matter how you cut it, it's still 18 just an estimate; isn't that correct? 19 A That's correct. 20 Q Okay. And I'm not an engineer, but why 21 would you compare a dry weather -- normal dry-weather 22 day, instead of using a normal wet-weather day? 23 A Well, we split it up, because dry-weather 24 variations in the hydrograph going through the base 25 flow of the sewer system, is very regular. So that is</p> <p style="text-align: right;">Page 428</p>
<p>1 community. It takes away the very resources they need 2 to address that punitive point that the State wants to 3 make.</p> <p>4 I'd like to tell you a short story about 5 a judge in New York City traffic court. We were 6 heading to the emergency room. My husband was rushing 7 me, at eight-and-a-half months pregnant, to the 8 hospital.</p> <p>9 He rushed out of the car at the emergency 10 room entrance to assist me inside. Short story: Our 11 car was impounded and towed. We were fined. And there 12 we are in that court. And we watched that judge -- 13 guilty he gavelled. Guilty, one after another. Guilty. 14 And so when my turn came, he looked at me and said, 15 Well, obviously your facts are true. At that point, I 16 was way overdue.</p> <p>17 He slammed the gavel down and said 18 guilty. And then he said, "fine waived." That was a 19 lesson for me. Hard-line facts may say guilty. But 20 what you can do about it, is a different story. 21 You can decide the consequences. You decide the 22 justice.</p> <p>23 Thank you for your time.</p> <p>24 MR. YOUNG: Thank you for your comments, 25 Ms. Hyman.</p> <p style="text-align: right;">Page 427</p>	<p>1 our starting point.</p> <p>2 When you look at the I and I for wet 3 weather, you can do hydrographs, and you can generally, 4 in most cases, get a good estimate of the extra water 5 coming into the system to get a better estimate of the 6 flow.</p> <p>7 Q Okay. But are rain flows ever constant, 8 as you assumed? 9 A Are rain flows ever constant? 10 Q For hours and hours on end? 11 A It was not in a shape of a hydrograph, 12 and this was not a storm event -- a normal storm event 13 either, so no, hydrograph is not constant forever. 14 Q Okay. So I think you testified that 15 multiple spill method estimate methods can be used; is 16 that correct? 17 A That's correct. 18 Q And didn't the District provide the Water 19 Board initially right away, in their five-day report, 20 with three different estimates? 21 A I would have to see the report. But the 22 District did come up with three different estimates, 23 yes. 24 Q Okay. And does the State Water Board, 25 when you provide sanitary sewer overflow training, do</p> <p style="text-align: right;">Page 429</p>

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1 **you teach people how to estimate during flood**
2 **conditions?**
3 A During flood conditions? Well, I --
4 first of all, I characterize the Water Board had a
5 training session about how to do the different methods.
6 So they didn't necessarily say, This is a method to
7 which you apply in each situation. So that was really
8 one of the points of the training method, is you really
9 need to take the circumstances of the individual case
10 to determine which is the better and best method.
11 **Q Okay. But does the State mandate that a**
12 **certain method be used by dischargers to estimate**
13 **spills?**
14 A No, it does not.
15 **Q Okay. And do dischargers have to certify**
16 **under penalty of perjury, that their spill estimates**
17 **are accurate?**
18 A Yes, they do.
19 **Q And are they subject to criminal and**
20 **civil penalties for falsification of estimates?**
21 A Yes, I believe so.
22 **Q So what would be the incentive to not**
23 **accurately report?**
24 A I'm not going to speculate on the
25 incentives. I mean, there is clearly some incentives

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1 to low ball your estimate so that you can get a lower
2 fine.
3 **Q Okay. So you said that normally**
4 **wastewater treatment plants are required to treat storm**
5 **water; is that correct?**
6 A Say that again?
7 **Q That wastewater treatment plants are**
8 **normally required to treat storm water?**
9 A It depends on what is in the permit.
10 **Q Okay. And in the District's permit,**
11 **doesn't it reference the industrial storm water permit?**
12 A I'm not as familiar with the District's
13 PDS permit.
14 **Q Okay. Did you make any allegations in**
15 **the administrative civil liability claim complaint that**
16 **the District failed to comply with the industrial storm**
17 **water permit?**
18 A We did say that the permit -- the PDS
19 permit requires them to treat storm water and that was
20 a prohibition that they violated in this event.
21 **Q But did you claim that they violated the**
22 **industrial storm water permit?**
23 A I do not know.
24 **Q And isn't that requirement for industrial**
25 **storm water treatment, that it's rain water falling**

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1 **on-site?**
2 A I'm not familiar with that.
3 **Q Okay. Is there a difference between**
4 **rainwater falling on the site, and floodwater coming in**
5 **from outside?**
6 A I don't know.
7 MS. THORME: Okay. So Exhibit 29, please. Can
8 we have the -- do we have the screen on?
9 MS. MACEDO: It's C --
10 MS. THORME: Yeah.
11 MS. MACEDO: -- right?
12 BY MS. THORME:
13 **Q Okay. So this -- there was an e-mail in**
14 **here about the photo? Okay, at the bottom -- at the**
15 **bottom there is an e-mail. Are you aware of this**
16 **e-mail?**
17 A Yes, I am.
18 **Q Okay. Does the e-mail say that the --**
19 **"per the attached pictures, sewer flowed back up into**
20 **his bathtub, but did not spill out"?**
21 A I'm not reading the e-mail word-for-word,
22 but --
23 MS. THORME: Can you highlight that, what I
24 just read, please, for the "per the attached picture?"
25 **Q Okay. Do you see that now, "per the"?**

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1 A Yes.
2 **Q Okay. Do you have any evidence that it**
3 **did spill out of the bathtub?**
4 A No.
5 **Q Okay. And then it says that, "apparently**
6 **a small amount overflowed out of his toilet as well.**
7 **He was able to clean the spill out, as it was just a**
8 **few gallons."**
9 **Do you have any evidence that there was**
10 **more that came out of the toilet or that it mixed with**
11 **storm water coming in from outside?**
12 A It mixed with the floodwaters that were
13 inside his bathroom.
14 **Q What evidence do you have of that?**
15 A The photo evidence and his testimony.
16 **Q Okay. His testimony is hearsay, so what**
17 **evidence do you have?**
18 A There is the photo evidence.
19 **Q So the photo evidence was attached to**
20 **this e-mail?**
21 A That's correct.
22 MS. THORME: Okay. Can you bring up Exhibit
23 24, please?
24 **Q So this document was a CIWQS report that**
25 **you testified that you created?**

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1 A I did not create this report.
2 **Q Okay. Who created it?**
3 A Jim Fischer did.
4 **Q Okay. Did he authenticate it?**
5 A Yes.
6 **Q Okay. And on here, there are several**
7 **claims of sanitary sewer spills, and we had submitted**
8 **with our evidence Exhibit 93, about the incorrect**
9 **allegations that these were District spills.**
10 **Did you review that evidence?**
11 A Exhibit 93, I don't remember the
12 particulars of it.
13 MS. THORME: Okay. Could you bring up 93,
14 please?
15 **Q Were you aware that none of those four**
16 **spills that were in Exhibit 24, were District spills?**
17 A If that is what you're contending.
18 **Q Okay. Well, we will walk through them.**
19 MS. THORME: So this was -- if you can, down at
20 the bottom -- so is -- no, can you blow up just like
21 the middle. Maybe it's the second page. Sorry. The
22 second page.
23 **Q Okay. So who does it say the discharger**
24 **is at the top?**
25 A It says, "Oceano Community Service

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1 District. "
2 **Q And is that a separate entity from the**
3 **Sanitation District?**
4 A Correct. That is a satellite system.
5 **Q Okay. So that would not be a District**
6 **spill; is that correct?**
7 A That's correct.
8 **Q So there, who is that discharger?**
9 A That says City of Arroyo Grande.
10 **Q So that is not the Sanitation District;**
11 **is that correct?**
12 A That's correct.
13 MS. THORME Okay. The next one, please.
14 **Q Who is the discharger on this one?**
15 A The City of Arroyo Grande.
16 **Q And that is not the Sanitation District;**
17 **is that correct?**
18 A Correct.
19 **Q Next, please.**
20 **And is this a plugged private sewer**
21 **lateral, belonging to a private entity?**
22 A What was the question?
23 **Q Is this a plugged private lateral sewer**
24 **spill by a private entity?**
25 A It says the discharger is TRW Enterprise.

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1 **Q And then does it say "private lateral"?**
2 A Let me see where you're looking at --
3 yes.
4 **Q Okay. So were any of those four spills**
5 **that were in Exhibit 24, that were claimed to be the**
6 **District spills, District spills?**
7 A It does not look so.
8 **Q Okay. Thank you.**
9 **And did the District extensively**
10 **investigate possible spill locations?**
11 A Extensively? I don't think I would
12 characterize it in that method.
13 **Q Okay. Did they provide ample**
14 **photographic evidence of their efforts?**
15 A They did provide photographs. I wouldn't
16 necessarily characterize that as ample.
17 **Q Do you have any evidence that additional**
18 **spills occurred that were not reported?**
19 A We have testimony today, yes.
20 **Q By whom?**
21 A Mr. Appleton.
22 **Q Where did that happen?**
23 A That happened at the plant. I'm speaking
24 of the day of the event.
25 **Q Okay. And what evidence do you have that**

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1 **that left the wastewater treatment plant site?**
2 A That left the wastewater treatment? Well,
3 it exited the headworks, so it was discharging onto the
4 site.
5 **Q That wasn't my question. My question**
6 **was, what evidence do you have that it left the**
7 **treatment plant site?**
8 A There was substantial discharge, likely
9 out of that point. And the District concluded that
10 most of the floodwaters that were coming out of the
11 manholes, exited the plant with the floodwaters, and
12 therefore, it seems logical to conclude that that was a
13 similar discharge point mixed with the rest of the
14 sewage and storm water was being discharged out of the
15 plant site.
16 **Q Okay. That was not my question. My**
17 **question was, what evidence do you have? Not what**
18 **would be the likely conclusion or a reasonable**
19 **conclusion, what evidence do you have?**
20 MS. MACEDO: You've asked and he's answered it.
21 If you don't like his answer, that's fine.
22 MR. YOUNG: Hang on. He hasn't really answered
23 it. Go ahead.
24 THE WITNESS: I have the evidence of the
25 testimony of the -- of Jeff Appleton.

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1 BY MS. THORME:
2 **Q And did he testify that it left the**
3 **treatment plant site?**
4 A He testified that it left the headworks.
5 **Q And you testified that there is no flow**
6 **meter on manholes; is that correct?**
7 A That wasn't what I testified. I said
8 that the District wasn't measuring flow out of
9 individual manholes during the event.
10 **Q Are there flow meters on manholes?**
11 A There could be.
12 **Q Normally, are there flow meters on**
13 **manholes?**
14 A No.
15 **Q Okay. And would the flow meter, in this**
16 **case, have to go in and out in order to get a**
17 **completely accurate estimate, as you would desire, for**
18 **both water coming to the treatment plant and going out**
19 **of those manholes?**
20 A I'm not sure I understand the question.
21 **Q Okay. So you want to know how much water**
22 **came out of the manholes. You would need a flow meter**
23 **that went out, correct?**
24 A Sure.
25 **Q And then if you're saying that the**

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1 **floodwaters also came in, you would need a flow meter**
2 **that went into the manholes, correct?**
3 A If you want the most accurate estimate,
4 yes.
5 **Q Okay. So you said that you had a**
6 **conservative start and stop time to account for**
7 **uncertainty in I and I; is that correct?**
8 A That is part of the reason, yes.
9 **Q Okay. So you essentially started the**
10 **spill at a different time than the District said the**
11 **spills occurred?**
12 A That's correct.
13 **Q So how reasonable is that for you to just**
14 **chop an hour off to account for uncertainty?**
15 A How reasonable?
16 **Q Yes.**
17 A I stated it is reasonable.
18 **Q And is there any engineering guidelines**
19 **that you used when you made that decision?**
20 A I just used my best professional
21 judgment.
22 **Q Okay. And you are the only civil**
23 **engineer that signed off to the technical report and**
24 **Exhibit 1; is that correct?**
25 A That's correct.

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1 **Q And you signed off as a reviewer, not a**
2 **preparer; is that correct?**
3 A That is incorrect.
4 MS. THORME: Can we bring up Exhibit 1, please?
5 The first page.
6 **Q So I see in the middle it says, "prepared**
7 **by Leo Sarmiento, PE," who is a chemical engineer, "and**
8 **Jim Fischer," who is a mechanical engineer. And then**
9 **it says, "reviewed by Dr. Matthew Buffleben, PE, civil**
10 **engineer" so --**
11 A That's right.
12 **Q It says you reviewed it, not prepared it?**
13 A Well, originally Jim Fischer started the
14 first couple of drafts, and I made substantial
15 alterations to it, so that is slightly inaccurate. It
16 was also prepared and reviewed by me.
17 **Q And also there were several other**
18 **instances of inaccuracies that were found in this**
19 **technical report; is that correct?**
20 A There were some misstatements, yes.
21 MS. THORME: Okay. I have no further
22 questions.
23 MR. YOUNG: Redirect?
24 MS. MACEDO: No. Thank you.
25 MR. YOUNG: Okay. Any board questions?

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1 Mr. Johnston?
2 MR. JOHNSTON: I have no questions.
3 MR. YOUNG: Mr. Jordan?
4 MR. JORDAN: Thank you, Mr. Chair.
5 I'm not even going to try your last name.
6 THE WITNESS: It's okay.
7 MR. JORDAN: How many of these have you done,
8 generally, this kind of process where you go through
9 and estimate a spill?
10 THE WITNESS: Well, this is my first
11 enforcement case as part of a supervisory position, so
12 normally I haven't estimated a spill site before.
13 MR. JORDAN: You have not?
14 THE WITNESS: No, I have not.
15 MR. JORDAN: Okay. So the particular question
16 over -- that was raised up before from the last witness
17 on the drop-off in the rates, your use of the straight
18 line and the other witness's contention with that
19 drop-off, can you tell me some more about that protocol
20 and rather than the assumptions, is that used widely by
21 the Department -- the Department of Enforcement group,
22 or does it verify it or is it crediblized by other
23 studies that you have done or other enforcement cases?
24 THE WITNESS: Well, I have done -- I have
25 extensive knowledge of hydrology, and so I do take that

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<p>1 experience into what we calculated for the sewer 2 overflow. And what we really are talking about is 3 hydrology when we're talking about the inflow into the 4 sewer system. And so I draw on that experience and my 5 other work, to estimate what is reasonable in this 6 case.</p> <p>7 And so in this case, I would still expect 8 a hydrograph of going up and down. But for the reasons 9 I stated during my presentation, is that, A, at the 10 start point, I feel very strongly that was not the 11 peak. So we underestimated there.</p> <p>12 And the second point was that the area 13 was flooded. Now, the model that he was talking about 14 before, it a very good technical model. But I don't 15 believe it applies in this event. And I can get more 16 technical in my review, if you want to.</p> <p>17 I mean, this basic model is a percentage 18 of the rainfall. It's called the R factor. And so 19 basically this R factor for this event, was about 3.3 20 percent and that is how much percent of rain got into 21 the system.</p> <p>22 Well, during a flood event, like I 23 alluded -- or stated in my presentation, there is a lot 24 more pathways for water to get into the system. And I 25 know the District is claiming that the pressure in the</p> <p style="text-align: right;">Page 442</p>	<p>1 MR. YOUNG: Dr. Wolf? 2 DR. WOLF: Yes. 3 Dr. Buffleben, I have a couple of 4 questions.</p> <p>5 The first one, when the sewer pipeline is 6 near capacity, let's say full, and you do have surface 7 flooded water pulling, do you have the venturi 8 (phonetic) effect of basically drawing some of that 9 surface water into the manhole?</p> <p>10 THE WITNESS: It is possible, but I have not 11 really thought about that though.</p> <p>12 DR. WOLF: Okay. Earlier on in your 13 presentation, you showed the slide of a four-inch 14 pipeline, this was the KSBY slide --</p> <p>15 THE WITNESS: Yeah.</p> <p>16 DR. WOLF: -- and it was showing discharge that 17 was on the right side of the slide?</p> <p>18 THE WITNESS: That's correct.</p> <p>19 DR. WOLF: And you did not give a quantitative 20 value, in terms of what the contribution was. You made 21 the argument that this discharge through a vent, had 22 not been accounted for by the District.</p> <p>23 Do you have any estimation of gallons per 24 minute and duration of that event?</p> <p>25 THE WITNESS: I did not do the calculations for</p> <p style="text-align: right;">Page 444</p>
<p>1 pipe system was always greater than the floodwaters. 2 But I think there is evidence in the case that shows 3 that that claim has some doubt.</p> <p>4 And so I do believe that there was time 5 that floodwaters entered into the system, and that the 6 floodwaters weren't always held back by the pressure 7 within the sewer system.</p> <p>8 MR. JORDAN: Okay. And I just want to give you 9 one more chance to confidently state that, although you 10 drew an average line across there at the four million 11 gallons per day level until the system caught back up, 12 you still feel that that is a very credible 13 under-estimation of what was actually going on during 14 that period of time, right?</p> <p>15 THE WITNESS: Yes. In particular because the 16 spill event was on Monday, too. So there might have 17 been some storage that was passed through the system 18 late Sunday evening. But the spill event on Monday, 19 really confirms in my mind that the system was at full 20 capacity probably right around 10:00 or so. And then 21 the next day, that is when the storage -- after they 22 turned on the additional pump at 10:00 a.m. Monday 23 morning, that is when the storage system was brought 24 down.</p> <p>25 MR. JORDAN: Okay. Thank you, very much.</p> <p style="text-align: right;">Page 443</p>	<p>1 that particular manhole. So if you're using the table 2 like the District did, it's assuming that the pit hole 3 size is seven-eighths diameter and a four-inch diameter 4 pipe is much larger than that. So I'm very confident 5 to say that it's much larger than they estimated. And 6 they also included that pit hole value into their 7 calculations.</p> <p>8 But I would have to sit down and find the 9 proper equations to do that calculation for you, and I 10 have not done that.</p> <p>11 DR. WOLF: Okay. And then my last question is 12 you also mentioned the pump station opening where you 13 had -- there was testimony of -- from Mr. Appleton of 14 the spillover, and I think there was a numeric value of 15 about six inches of water that was spilling out?</p> <p>16 THE WITNESS: Yes.</p> <p>17 DR. WOLF: Again, any -- and this was just 18 brought up, you know, just a little while ago with some 19 other questions -- any estimation of what that 20 contribution would be?</p> <p>21 THE WITNESS: Well, he didn't give a duration 22 of how long, so that would be the first question. And 23 I would also need to know the width of the door. And 24 so that is the weir calculation, like you said.</p> <p>25 And so there are equations to develop,</p> <p style="text-align: right;">Page 445</p>

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1 and if I had more accurate width dimensions and how
2 long it was going, I could very easily, with the right
3 equation, figure out an amount.
4 Now, if you're trying to get a ballpark,
5 you know, that flow would be greater than the manhole.
6 They removed one of the covers on one of the manholes,
7 and they used the table value estimate that was 800 GPM
8 of one inch coming out of that manhole, a
9 24-inch-diameter manhole. I can confidently say that
10 that door would have been -- that level GPM six inches,
11 would have been higher than that.
12 DR. WOLF: So that is about 400,800 GPM?
13 THE WITNESS: No --
14 DR. WOLF: I'm using my calculator. I'm
15 cheating.
16 THE WITNESS: No, I would not do the
17 calculation that way. But it is essentially a weir,
18 you can come up with an answer. I have not -- since he
19 was testifying that today, I have not had time to do
20 that.
21 DR. WOLF: Okay. But you would characterize it
22 as being significant?
23 THE WITNESS: Very significant, yes.
24 DR. WOLF: Thank you very much.
25 THE WITNESS: Okay.

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1 MR. YOUNG: Mr. Harris?
2 MR. HARRIS: It's getting late, so I'm getting
3 a little punchy so if I sound a little incoherent, I
4 apologize.
5 The plant and the trump lines, are they
6 all covered by the PDS permit?
7 THE WITNESS: Yes.
8 MR. HARRIS: Does the District hold a permit
9 for a collection system?
10 THE WITNESS: Yes.
11 MR. HARRIS: What does that cover? Does that
12 cover just the trump lines?
13 THE WITNESS: I'm not the expert on the
14 permits, but the SSOWER, so I don't know. Jim Fischer
15 would be able to answer that question in details.
16 MR. HARRIS: Okay. So I think there has been a
17 discussion trying to draw a line between what the
18 District was responsible for and what other collections
19 systems might be responsible for, and I'm a little
20 unclear.
21 So if the backup occurs all the way into
22 other districts' collection systems and comes out the
23 manhole covers, who is responsible for that spill?
24 THE WITNESS: That entity that caused -- that
25 had caused the spill so in this case, South San Luis

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1 Obispo District.
2 MR. HARRIS: Okay. Thank you.
3 MR. YOUNG: Okay. So no questions,
4 Mr. Jeffries?
5 MR. JEFFRIES: No.
6 MR. YOUNG: None for myself. Thank you very
7 much.
8 THE WITNESS: Thank you.
9 MS. MACEDO: With that, the prosecution team
10 rests, and we reserve the rest of it for cross.
11 MR. YOUNG: Okay. How much time does the
12 prosecution team have?
13 MR. LODGE: Twelve minutes.
14 MR. YOUNG: Twelve minutes. Okay. So now how
15 much --
16 MS. THORME: Can we know how much time we have?
17 MR. YOUNG: How much time does the District
18 have, an hour?
19 MS. THORME: The same?
20 MR. LODGE: 46 minutes.
21 MR. YOUNG: 46 minutes.
22 Okay. So how many witnesses do you have?
23 MS. THORME: We have two.
24 MR. YOUNG: Two.
25 MS. THORME: So it would be Mary Vorissis, who

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1 is our next witness.
2 MR. YOUNG: Okay.
3
4 DIRECT EXAMINATION
5 THE WITNESS: I'm Mary Vorissis, and I'm from
6 Thousand Oaks, California. I'm representing CH2M Hill,
7 and we did a peer review, a third-party review, on the
8 flow estimates that were made.
9 MR. YOUNG: And can you spell your last name?
10 THE WITNESS: V-o-r-i-s-s-i-s.
11 MR. YOUNG: All right. Thank you.
12 THE WITNESS: And I wanted to talk about the
13 result of our peer review so I'm going to make this
14 kind of quick, because I know we have gone through a
15 lot of this stuff just in our last -- the last things
16 here.
17 So what we were asked to do was look at
18 the two different methodologies that were used to
19 determine the spill and render our professional
20 judgment on that.
21 One methodology, the District's
22 methodology, and the other methodology, what the State
23 did.
24 The first thing we did is we looked at
25 both methodologies. We had spreadsheets from the

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<p>1 District, as well as from the State. We went through 2 all the math on the spreadsheets just to make sure 3 there wasn't a bust, because we saw there was a big 4 discrepancy between the gallons that the State, Office 5 of Enforcement said, and what the District said. 6 We then looked at the methodologies 7 themselves, and started looking at, okay, what was a 8 reasonable methodology to use. 9 And if I can have you go to 4725. Okay. 10 If you can pull up the second thing -- now, this is 11 from -- again, we showed this earlier this morning, but 12 there was a training that was done for operators on 13 determining sewer system overflows, and there were 14 several methods that were identified that could be 15 used. 16 Looking at those different methods and 17 looking at what was happening in the system, the 18 District chose to use the duration and flow method, as 19 a method to use for that. The Office of Enforcement 20 used the pump station method, which is method number 4. 21 Those were two of the methods -- or they used a version 22 of method 4. 23 So let's go back to the District's 24 method. And in our conclusion is that the District's 25 method was a good method, in that it was trying to</p> <p style="text-align: right;">Page 450</p>	<p>1 ones where they were looking at annular space, they did 2 use the photographs that were part of that method. 3 Okay. Going to the State's method. When 4 we looked at that, we found that there were -- okay -- 5 and I want to preface by saying, our conclusion said 6 look it, these are estimates. So no method is perfect. 7 And we did identify that, yes, we agree, 8 that there are things that could have been missed in 9 the system with the District's method, but given the 10 circumstances, they did the best they could. 11 When we looked at the State's method, we 12 ran into some issues with the fact that -- if you will 13 go to -- I'm going to have you look at -- let's see 14 here. 15 We will go into method 4, and that is on 16 433 -- 4733. If you will look at that method, the very 17 last point says you compare a normal-day effluent flow, 18 and then you can determine the effluent flow for that 19 spill event. 20 Now, this was not a normal day. What 21 happened on that day was there was a rainstorm. You 22 had flooding. This was in no way a normal day. 23 So to take a normal dry-weather hydrograph and 24 translate that to try and turn that into a wet-weather 25 hydrograph, doesn't make sense. It doesn't follow any</p> <p style="text-align: right;">Page 452</p>
<p>1 capture what was happening in the city. 2 When you use the duration of flow, you 3 have to understand where the manholes are that are 4 producing flow and try to estimate what the amount of 5 flow is that is coming from the manholes or any other 6 spot in the system that flow could be coming out. 7 And so the District used reconnaissance. 8 After the fact, they went back. They looked at the 9 manholes, and they documented field reports as to what 10 the condition of the manholes were. Did they see open 11 pit holes? Did they see that the manhole lid showed 12 that it had been lifted somewhat? And they did the 13 best they could to come up with an estimate. 14 I heard reference about the tables, you 15 know, used in that method. They actually used -- had 16 to use a hydraulic grade line, because unlike most of 17 these methods -- because this was an abnormal 18 circumstance, everything was flooded. So these tables 19 and the things that you're using are based on if you 20 had a spill on the day when there is no water on the 21 street. 22 So they did use an approved method -- 23 they used the hydraulic applications method that has 24 been used for that type of determination to determine 25 the flow coming from those manholes. And then for the</p> <p style="text-align: right;">Page 451</p>	<p>1 kind of engineering logic. 2 And if you go back -- and I will have you 3 pull up just page 4719 of my report. If you look at 4 that figure, the bottom line shows a normal dry-day 5 hydrograph. That is the red line. The top line is 6 showing during a flood event, what the hydrograph 7 looked like. And this was actually the day before. 8 This green line is what happened when their meter was 9 running on the 18th of December, when there was also 10 rain in the system. 11 And you can see the rain bars there, and 12 you can see the steep decline. Once the rain stops, 13 that hydrograph drops off very rapidly. And this is 14 from December 18th. This was the day before the storm. 15 So that is more indicative of what a hydrograph looks 16 like. 17 So the bottom line is, you know, you 18 cannot compare apples to oranges. You can't take a 19 dry-weather hydrograph and try to make it a wet-weather 20 hydrograph. 21 And I guess I'm kind of running out of 22 time here. So I will kind of leave it at that, and 23 open it up for questions. But our conclusion was that 24 the District's method probably had more merit than what 25 was used by the State, and that it was an approved</p> <p style="text-align: right;">Page 453</p>

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1 method, and it is something that is justifiable and a
2 little more reliable, and it tried to visualize what
3 actually happened.
4 MS. THORME: Thank you.
5 MR. YOUNG: Cross?
6 MS. MACEDO: I'm sorry. You didn't have
7 anything?
8 MS. THORME: No.
9 MS. MACEDO: Okay. I just have a couple of
10 questions for you.
11
12 CROSS-EXAMINATION
13 BY MS. MACEDO:
14 **Q Do you -- to make sure I understand what**
15 **a peer review is. You did not create your own or do**
16 **your own analysis of the spill water?**
17 A That is correct.
18 **Q Okay.**
19 A We just looked at the two different
20 spills.
21 **Q Do you acknowledge that the District**
22 **missed particular discharge points?**
23 A Yes, and I pointed that out in the
24 report. That they could have missed.
25 **Q Yes. After hearing today's testimony, do**

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1 **you acknowledge the District missed a discharge point**
2 **in terms of the headworks?**
3 A I can't say that, because I don't know
4 enough detail about that situation to know what
5 happened to that part of it. Did it recede back into
6 the plant? Was it pumped -- I don't know that.
7 **Q But it is possible that the headworks may**
8 **have been the discharge point itself?**
9 A I say it's possible. But again, what
10 happened to the water right after it discharged, is
11 what the issue is here, where it ended up.
12 **Q Okay. Based on the method that the**
13 **District used and that you ultimately find reliable,**
14 **you essentially ignore the pump data; is that correct?**
15 A Because the influent pump was out. So
16 yes --
17 **Q But the --**
18 A -- so you're looking at what is actually
19 happening in the system at the time.
20 **Q But --**
21 A So you're trying to find that, and that
22 is a proved methodology, yes.
23 **Q But the effluent pump worked throughout**
24 **the spill?**
25 A Yes, it did.

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1 **Q And the pump data that was available, you**
2 **do not use at all in your method?**
3 A No. It doesn't come into play in that
4 methodology, no.
5 **Q Okay. Do you acknowledge that the**
6 **District always chose the lower volume when deciding**
7 **between the picture (phonetic) method and the tables**
8 **produced by CWEA?**
9 A No, because the District did not use
10 tables. Their calculations -- they actually had to
11 define the hydrology grade line, so they actually had
12 the calculations imbedded in their spreadsheet to
13 calculate out what those pit holes were and stuff.
14 They couldn't use the tables. The tables
15 are based on -- nothing over the top of the sewer. So
16 those are based on a non-sewer. When the sewer is
17 flooded, you have to use the hydraulic grade line. You
18 can't use that method. You can't use the table.
19 **Q Right. It's my understanding the tables**
20 **are based on equations?**
21 A They're based on equations, but they are
22 not based on a head of water on top of a manhole. They
23 are based on the manhole being in the street, and there
24 is no head of water. There is a head of water on it
25 when it's flooded.

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1 **Q Right. Correct me if I'm wrong. It's**
2 **based on a visual observation of how high -- a visual**
3 **observation indicates that the spray is above the**
4 **manhole, correct?**
5 A Right.
6 **Q Okay. And the District consistently**
7 **chose the lower of the two, between either the picture**
8 **and their reference when they chose that or the**
9 **equation?**
10 A No.
11 **Q No?**
12 A That is not the way I -- when I looked at
13 their spreadsheet, that is not the way I saw they had
14 done that.
15 MS. MACEDO: Okay. Nothing further.
16 MR. YOUNG: Any redirect?
17 MS. THORME: No.
18 MR. YOUNG: Okay. Mr. Jeffries?
19 MR. JEFFRIES: No.
20 MR. YOUNG: Mr. Harris?
21 MR. HARRIS: You did a peer review on two
22 methods. You did one with the State and with the
23 District, and you were not asked to look at the RMC
24 method?
25 THE WITNESS: No. I never even saw the report

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1 till yesterday.
2 MR. HARRIS: Okay. So you weren't aware that
3 that even existed?
4 THE WITNESS: I wasn't aware that it even
5 existed.
6 MR. HARRIS: Okay. When you talk about head on
7 manhole covers, do you have any idea how deep the water
8 was, when it flooded out?
9 THE WITNESS: It's my understanding that it was
10 somewhere around a foot. I don't know. It was -- at
11 different places it was different.
12 MR. HARRIS: Okay. So about a foot of head.
13 That's not a lot, if you consider what the gradient
14 might have been, especially on the lower manholes. I
15 don't know what the topography is in the general area
16 but, you know, it's 10 feet, 20, 30, 40, 50. You can
17 end up with one foot of head on those lower manholes
18 and one foot of water wouldn't amount to much with
19 resistance with water flowing above; is that not
20 correct?
21 THE WITNESS: I guess you can say that, yeah.
22 MR. HARRIS: Okay. Thank you.
23 MR. YOUNG: Dr. Wolf?
24 DR. WOLF: Could we go back to the slide called
25 Volume Estimating Methods? This was a slide that shows

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1 six different methodologies. That was the very first
2 slide that you showed us.
3 THE WITNESS: That is 4726 -- 25.
4 DR. WOLF: There we go. Can we zoom in? Yeah,
5 thank you.
6 Now, there are six methods presented
7 there. Are every one of these methods -- are every one
8 of these methods, an applicable method in this
9 particular scenario that we had?
10 THE WITNESS: No, they're not, no. You can't
11 use every one of these methods in this scenario.
12 DR. WOLF: Correct. So which ones are not
13 technically feasible to use?
14 THE WITNESS: You know, you can't really
15 measure the volume of the area --
16 DR. WOLF: Okay.
17 THE WITNESS: -- because that doesn't really
18 apply. We weren't spilling flow into an open channel
19 where we could, you know, document how much was going
20 in. That is Method Number three.
21 Method Number five, upstream connections.
22 There, everybody's upstream laterals are coming into
23 the sewer, so that method couldn't be used. And then
24 the volume captured -- you know, we're talking about a
25 volume that was in the street eventually and washed out

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1 to the ocean. So you couldn't use Method Six, as well.
2 So two and four were the two methodologies that you
3 could have pulled, unless there was some other
4 methodology, you know, that was not on that table.
5 DR. WOLF: So with your professional
6 experience, you would say that out of the six, there
7 were really two methods to choose from?
8 THE WITNESS: Uh-huh.
9 DR. WOLF: And have you done other similar
10 studies?
11 THE WITNESS: I have not done a similar study
12 to this. I have done a lot of infiltration and inflow
13 analysis and SSTs studies and wastewater studies. Also
14 a lot of wastewater calculations with hydrographs and
15 studies of hydrographs going into wastewater plants.
16 DR. WOLF: So you have not had an opportunity
17 to compare and contrast the two methods with other
18 prior cases?
19 THE WITNESS: No, I never had a case where I
20 had to do this.
21 DR. WOLF: All right. Thank you very much.
22 THE WITNESS: You're welcome.
23 MR. YOUNG: Mr. Jordan?
24 MR. JORDAN: Nothing.
25 MR. YOUNG: Mr. Johnston?

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1 MR. JOHNSON: Nothing.
2 MR. YOUNG: Okay. So this concludes this
3 witness.
4 MS. THORME: Can we possibly take a break
5 before our next witness --
6 MR. YOUNG: Sure.
7 MS. THORME: -- just for five minutes?
8 MR. YOUNG: Who is our next witness after the
9 break?
10 MS. THORME: Mr. Aaron Yonker, who is the
11 person most knowledgeable designated for the District
12 and our last witness.
13 MR. YOUNG: And the last witness.
14 (Break taken.)
15 MR. YOUNG: Okay. Folks, let's return to our
16 places and return to our hearing.
17 Okay. Ms. Thorme, you have your last
18 witness.
19 MS. THORME: Yes.
20 THE WITNESS: Good evening, members of the
21 board and chairman. My name is Aaron Yonker. I am
22 representing the District, and I'm the person most
23 knowledgeable. I'm from --
24 THE REPORTER: Excuse me, you're from where? I
25 couldn't hear you.

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1 THE WITNESS: I'm from Templeton.
2 MR. YOUNG: Is the microphone on?
3 MS. THORME: Is the mike on?
4 THE WITNESS: Yes.
5
6 DIRECT EXAMINATION
7 BY MS. THORME:
8 **Q Okay. And did you take the oath earlier**
9 **today?**
10 A I did take the oath.
11 **Q Okay. And you inserted a declaration**
12 **into the evidence in this case, and is this a copy of**
13 **Exhibit 98, that was your declaration?**
14 A Yes, it is.
15 **Q And do you attest that the information in**
16 **that declaration and attached to that declaration, are**
17 **true and correct to that?**
18 A I do.
19 **Q Okay. Thank you.**
20 **If we can jump right in. Let's jump to**
21 **the date of December 18th, 2010. There was a great**
22 **deal of rain that day, wasn't there?**
23 A Yes, there was. As you can see on the
24 exhibit posted -- can you zoom in?
25 **Q It's Exhibit 45.**

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1 A This is Exhibit 45. This exhibit shows
2 rain gauges over a period of time. Looking at December
3 18th, you can see on the three closest rain gauges to
4 the treatment plant, you can see that the rain on that
5 date averaged between 2.8, 2.9 and 3.6 on that day.
6 This was a date preceding the event.
7 **Q Okay. And it rained quite a bit on the**
8 **19th, too; is that correct?**
9 A Yes, it did. As you can see on the 19th,
10 there was rain. Not quite as much, but it was between
11 1.7 and 2.2.
12 **Q So it didn't -- there was no spills on**
13 **December 18th, even though there was more rain; is that**
14 **right?**
15 A No, there was not.
16 **Q Okay. So what made December 19th**
17 **different?**
18 A December 19th was different in that when
19 you look at these rain totals that I just showed you,
20 those were actually hourly -- I'm sorry, daily
21 averages. When you look at the duration of that rain
22 event, you will see that that was actually a two-day
23 duration storm that began on the 18th and continued on
24 throughout the hours of the 18th and into the 19th.
25 What happened is that rain fell onto a

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1 very large watershed -- actually, two watersheds about
2 a 157 square-mile area. One of those watersheds comes
3 down into the Meadow Creek area, which is the Oceano
4 Lagoon, which is the source of the flooding. The other
5 one lands onto the watershed of the Arroyo Grande
6 Creek.
7 On Saturday the rain fell on that upper
8 watershed above those areas and migrated its way down.
9 By the time it reached that lower portion of the
10 watershed, it was the 19th. That rain duration was
11 constant. That rain happened on the 19th, falling on
12 an already saturated watershed.
13 What happened is you had elevated levels
14 within the Arroyo Grande Creek. In fact, San Luis
15 Obispo County Public Works reported that the levy came
16 within eight inches of topping that day. So the creek
17 was very high.
18 As it turns out, the Arroyo Grande Creek
19 comes to confluent with the Oceano Lagoon. That is
20 where with the Sand Canyon flap gates are that you
21 heard about. The elevated creek kept those flat gates
22 from opening, and caused that lagoon to surcharge over
23 the banks and up into the adjacent neighborhoods and
24 eventually into the District's treatment plant.
25 A unique instance here is -- what you're

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1 looking at here is a picture of an upper flap gate on
2 the Arroyo Grande Creek. This is on the south side of
3 the treatment plant.
4 So the water coming from the lagoon was
5 coming from the north side, that has been attested to
6 today -- tonight, encroaching on the front side of the
7 treatment plant. This is on the back side of the
8 treatment plant.
9 What you see here, is actually tree
10 debris, sticks and branches that were stuck within that
11 flat gate. That flap gate is intended to take water
12 from the watershed around the Oceano airport to dispose
13 in the Arroyo Grande Creek down to the ocean. As a
14 result of the high flows in the Arroyo Grande Creek,
15 the water was flowing backwards around the treatment
16 plant and depositing itself, both on the airport
17 property, as well as the treatment plant area, around
18 the headworks, causing significant flooding around the
19 headworks. And causing significant flooding around the
20 headworks structure, and on to the plant. And so we're
21 actually being -- it's encroaching from two different
22 locations.
23 **Q Mr. Yonker, was it essentially then, that**
24 **the Oceano area near the treatment plant became**
25 **somewhat of a bathtub because the water didn't have**

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1 anywhere to go?
2 A Essentially, yes.
3 MS. THORME: Okay. Can we have Exhibit 41,
4 please?
5 **Q And can you explain these photos?**
6 A Well, what you see here is a photo to the
7 same location. This is the treatment plant's entrance.
8 I think you have seen this picture today, perhaps not.
9 This is -- the close-up here is at the
10 driveway at the treatment plant looking down across
11 Aloha and down towards Honolulu. This is during the
12 peak of the storm. As you can see, this is a news
13 exhibit from KSBY.
14 What you're seeing there at the bottom is
15 a same -- it's comparative of the same location taken
16 at a different date. I believe this was in May or so,
17 of 2011, a few months later. But you can see the
18 conditions of that manhole and the dry conditions, the
19 street conditions, and of course, that water that was
20 encroaching into the treatment plant itself, is fairly
21 significant.
22 **Q And so the District did an analysis of**
23 **each of the manholes that it believes spilled; is that**
24 **correct?**
25 A That is true.

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1 MS. THORME: Okay. Can we move to the next
2 day, please? The next slide. The next slide, please?
3 No, the next page, please. Thank you.
4 **Q And this was more evidence of the**
5 **investigation that you all did after the spill?**
6 A That's true. We -- one of the aspects we
7 did -- this is later on into our investigation. But
8 what we needed to do is identify each of the manholes,
9 because the manholes at the time, as we mentioned, were
10 covered by the lagoon water that had encroached up.
11 There was spilling. There was no doubt that spilling
12 was occurring. The question was, where did it occur.
13 So what we needed to do was analyze each
14 one of those manholes and make a determination of what
15 type of flow would be coming from the manholes relative
16 to that surcharge within the collection system, and how
17 that might have happened and where it would have
18 happened. So we needed to investigate all the
19 facilities, take a look at those facilities, and really
20 do an engineering assessment to determine how that flow
21 really happened.
22 **Q Okay. So each manhole, you tried to make**
23 **an analysis of the amount of flow that had came out of**
24 **it?**
25 A If you can picture a surcharge in the

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1 sewer line -- that sewer line, the thing to remember
2 is -- it's come up a few times tonight -- our sewer
3 lines are about ten feet below the ground, twelve feet
4 below the ground.
5 So when we talk about a surcharge sewer
6 line pumping down some of the -- we talked about that
7 earlier today -- that sewer line is way down below the
8 ground. It's full of water down there. It eventually
9 rises and surcharges its way up. The pipe is slanted
10 to allow flow to the treatment plant. The water is at
11 sea level. It is going to slowly work its way up till
12 it finds a facility it can discharge from.
13 **Q Okay. Mr. Yonker, this slide was a**
14 **screen shot of the flood that the prosecution team used**
15 **at the top, are essentially the same view; is that**
16 **correct?**
17 A This was taken from the same video. This
18 is a video that we encouraged them to look at to
19 support our evidence.
20 **Q Okay. So we also have a dry-weather day**
21 **in that. And so the area that they were claiming was**
22 **bubbling up, is not the area where the cleanup is; is**
23 **that correct?**
24 A They were mistaken in their location, and
25 they actually identified that as what they called

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1 bubbling up of a clean-up. It actually referred to a
2 location down by the RV structure. There is no
3 clean-out there. What you see there is a clean-out
4 structure. Meaning that is the terminus point of a
5 collection system. It's not a manhole. It is the very
6 end of a pipe that allows the operators to get in there
7 and clean out if they need to clean out that system.
8 So there can be no further down
9 connection down beyond that point. The homes can't
10 connect in there. If you have a home, it has got to be
11 on the upstream of that to allow the flow. So that was
12 an erroneous statement made by the State.
13 **Q Okay. So how did the sewer spill happen**
14 **on the 19th and 20th happen --**
15 A The sewer spill on the 19th and the 20th
16 happened for a number of reasons; three reasons
17 specifically.
18 I have already addressed the fact that
19 the Oceano Lagoon, as well as the Arroyo Grande Creek
20 had come up and encroached onto the treatment plant in
21 a very significant fashion.
22 So that water combined with the -- that
23 water combined with the incident that we had at the
24 electrical pull box that we have referenced, allowing
25 that water to migrate down into -- again, this is a

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<p>1 picture of the headworks that we have showed many 2 times.</p> <p>3 For clarity, this is the top of the 4 headworks. This is grade level. As I mentioned, the 5 sewer pipes are about ten feet down. This right here 6 is about ten, twelve feet deep right here. I believe 7 that Mr. Appleton said that is about forty feet deep or 8 so. It is not quite that deep, but it is a subgrade 9 structure.</p> <p>10 The shunt trip itself was located up here 11 (indicating) in the valve room. What you see down here 12 is the pump room. As the water enters in here, it 13 enters down into this location, and it pumps up into 14 this header and then crosses itself -- crosses the 15 wastewater up.</p> <p>16 The electrical pull box would be on the 17 outside area here. You can see pictures of that. That 18 was the box that was raised to avoid this inner pump 19 ponding.</p> <p>20 And it actually traveled down in through 21 there, traveling down through the shunt trip itself and 22 shorting it out. So there's significant water, is the 23 first case.</p> <p>24 The electrical conduits, the ponding that 25 caused that to travel down to the shunt trip was number</p> <p style="text-align: right;">Page 470</p>	<p>1 through the pump into the discharge, traveling into the 2 header. It cannot get there because the valve was 3 closed.</p> <p>4 So it was a really -- what -- I guess, 5 what you could call a perfect storm of events. Three 6 significant events came together. Ones that you could 7 not have foreseen in advance. And that was -- 8 typically, I guess in a nutshell, baseline calls of the 9 spill that day.</p> <p>10 Q Okay. So had any of these problems ever 11 occurred individually at the plant previously?</p> <p>12 A Sure. Yes.</p> <p>13 Q No. I mean, the flooding or the valve 14 being closed or the --</p> <p>15 A Individually?</p> <p>16 Q Yes.</p> <p>17 A Oh, well, individually, we have had high 18 rains and stuff like that. We have had -- not had -- 19 no. Significant flooding, no. We have had significant 20 flooding that has come on. You have heard testimony 21 from residence flooding events not happening like that. 22 So the valve being closed, no.</p> <p>23 Q All right. So was there any way to know 24 all of these things would happen together on December 25 19th?</p> <p style="text-align: right;">Page 472</p>
<p>1 two.</p> <p>2 The third case was the discharge valve. 3 We did mention -- in prior testimony, we heard that 4 this is the backup diesel pump.</p> <p>5 This is a pump that the District had the 6 foresight to install. Not a requirement, but the 7 District functions off of these pumps here, and can do 8 so accordingly up to about nine or ten MGD. This is an 9 equivalent pump, nine or ten MGD.</p> <p>10 Should there be an incident that they 11 need to do maintenance on these pumps, take it out of 12 service, they can close this slide gate. And they can 13 institute the bypass pump, and they can do their 14 maintenance while they are bypassing into the header 15 structure and into the plant and entirely bypassing 16 this.</p> <p>17 In the case of the December 19th case, we 18 actually saw water come through here and entering the 19 headworks. The shunt trip failed. The pump stops so 20 this level started to rise up. It started to rise into 21 the collection system. And the significance of that 22 third event, is the fact that this discharge valve had 23 inadvertently been closed during prior maintenance.</p> <p>24 So when this pump was started up, this 25 discharge pipe that you see here, caused some suction</p> <p style="text-align: right;">Page 471</p>	<p>1 A Well, as I just mentioned, short of 2 hindsight, I would say not. It's been in this 3 operation for many years with many people seeing this 4 through design and constant operation. Of course, that 5 doesn't mean I would not see it.</p> <p>6 Q So the plant has been able to weather 7 very high flow swell conditions in the past without a 8 spill; is that correct?</p> <p>9 A The plant is capable of handling nine to 10 ten MGD, wet weather flow. We have seen flows in the 11 past that are that high, and they have handled them 12 perfectly well in the past.</p> <p>13 Q Okay. And would the electrical shunt 14 trip problem alone have caused this spill?</p> <p>15 A The electrical shunt trip alone? No, 16 because we have a bypass pump, as I mentioned. The 17 bypass pump could bypass the headworks if it failed.</p> <p>18 As you see here in this exhibit, we 19 actually had a repeat event happen after the December 20 event, and that happened in October. You can see the 21 date. It's hard to see from here. It was October 4th 22 of 2009. We had a very similar event happen. This was 23 very enlightening to us because it actually helped us.</p> <p>24 But essentially what happened, in August 25 of 2011, we reconnected that influent wiring. We</p> <p style="text-align: right;">Page 473</p>

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1 created an air gap. You heard testimony from Mr. Thoma
2 this morning about creating an air gap over that wall.
3 Regardless of that, we still had an event
4 happen where they shut down again. And that is what
5 really clued us in to the fact that this was a shunt
6 trip issue. We initially thought it was a motor issue,
7 a breaker issue. We conducted the breaker study. We
8 tried to resolve this issue. We created pipes, and
9 this is really what keyed us in to the fact that it
10 truly was a shunt trip issue.
11 **Q Okay. And the final thing is on the**
12 **bypass valve. Was the fact that that valve was closed**
13 **in itself, cause a spill?**
14 A No, the -- well, the valve had been
15 closed prior to the spill for -- I'm not sure how long,
16 but it worked perfectly. The only time you needed that
17 to be opened is when you needed to bypass a pump
18 itself.
19 **Q Okay. And what about the allegation that**
20 **the District had in 2004 had budgeted for a rewiring**
21 **project that was supposed to have prevented this issue?**
22 MS. THORME: Could you put up Exhibit 51,
23 please?
24 THE WITNESS: What you see here is an exhibit
25 that shows reconductoring. It's kind of hard to see.

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1 I guess if you could zoom on the lower box down there.
2 Bill Thoma testified a little bit about
3 this earlier. But what you see here is the '86
4 originally installation, the '86 upgrades to the plant.
5 It was installed with fireproof wiring, so that is the
6 wiring. That is the W (phonetic) designation that Bill
7 talked about. And so it was also, according to his
8 testimony, supposed to have seals at that time. So --
9 BY MS. THORME:
10 **Q Okay. And the District included three**
11 **different spill volumes in it's initial estimates; is**
12 **that right?**
13 A Yes, it is.
14 **Q Okay. And why did the District select**
15 **the estimate that it selected?**
16 A Well, it selected -- initially we
17 submitted all three because we wanted to be
18 transparent, and we wanted to provide the Water Board
19 with everything we had, but we wanted them to see
20 everything.
21 We selected the one we selected because
22 it was the most defensible. Everything we had been
23 learning from the State and the Regional Water Board is
24 that we needed to have great defensible evidence. We
25 needed to support our claim. We needed to bring an

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1 estimate that stands up. And to us, that evidence was
2 speaking to the people on the streets, taking pictures,
3 referencing news footage, performing calculations and
4 taking a look at it from as many different angles as we
5 can. As Matthew Buffleben had mentioned, as engineers,
6 we tried to look at that from all different sides and
7 what is most viable.
8 Specifically, as you can see here, we
9 needed to report that at the spill location. We can't
10 just come up with a big giant spill volume and then try
11 to report that in CIWQS.
12 So our understanding at the time, was
13 that CIWQS was maturing. And one of requirements of
14 CIWQS, at the time, is that it needs to specifically
15 identify the location, the latitude, the longitude.
16 **Q And did the District get word from the**
17 **Water Board to report based on manholes, at least**
18 **initially?**
19 A Yes. Yes, we did.
20 **Q And how did you get that word?**
21 A Through many forms. You can see here, my
22 understanding -- well, I spoke with Jim Fischer this
23 morning. My understanding from Jim is that South
24 County needs to report the SS --
25 THE REPORTER: I'm sorry, but are you reading

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1 something?
2 THE WITNESS: Yeah.
3 THE REPORTER: Could you slow down then.
4 THE WITNESS: Sorry.
5 My understanding from Jim is that South
6 County needs to report the SSO's from each of the 21
7 manholes separately.
8 BY MS. THORME:
9 **Q And were those manhole spills reported as**
10 **category one spills?**
11 A Yes, they were.
12 **Q And were they certified within the time**
13 **frame required by the sewer system permit?**
14 A Yes, they were.
15 **Q Okay. And was the -- did the Water Board**
16 **ask the District to provide an analysis of the**
17 **advantages and disadvantages of the -- each of the**
18 **spill volumes?**
19 A Yes. That was a report that I authored
20 myself.
21 **Q And did you provide that analysis to**
22 **them?**
23 A I did.
24 **Q Okay. And did the District undertake**
25 **remedial activity after the spill?**

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1 A Yes, we did.
2 **Q And did you provide the Water Board with**
3 **a list of those remedial activities on January 3rd of**
4 **2011 -- Exhibit 9, please, at page 9?**
5 A These are the various corrective actions
6 that we came up with after the spill event. Of course,
7 one of our intentions was to make sure that spill never
8 happened again.
9 And so these are the remedial actions
10 that we developed to institute so -- to make sure it
11 never happens. Yes, this is a copy of those documents,
12 and yes, I did.
13 **Q Okay. And did the District provide any**
14 **evidence about mitigating factors to harm?**
15 A Yes, we did.
16 **Q And did any of those have to do with the**
17 **beaches and the beach closures?**
18 A We provided evidence to the State,
19 talking about the various components of the beach and
20 that the beach would be closed for an extended period
21 of time. We supplied information relating to the
22 closure of the beach prior to the storm, through the
23 duration of the storm and beyond for several days, due
24 to safety and harm related to that storm event itself,
25 as well as additional monitoring and reporting

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1 requirements that were performed by the county.
2 **Q So it was closed before the spill**
3 **happened?**
4 A I believe it was closed on the 18th.
5 **Q And did the District provide how much**
6 **floodwater was spilled, in addition to the event from**
7 **the District?**
8 A How much floodwater was spilled?
9 **Q How much floodwater there was in relation**
10 **to the --**
11 A Oh, yes. We provided the State with
12 information on floodwater that had passed through the
13 Oceano -- Oceano Lagoon. This was a private study that
14 was commissioned by the county to determine that, and I
15 think they came up with 69 million gallons of water
16 sitting on top of the Oceano Lagoon that had passed
17 through the headworks -- I'm sorry, the flap gates.
18 **Q Okay. So this is Exhibit 63-2. So this**
19 **is the County's estimate --**
20 A Yeah --
21 **Q -- of the floodwaters?**
22 A -- what you see here is the 69 million
23 gallons that they came up with. It's an area at 4.9
24 feet depth over standard depth. On a previous e-mail
25 within this packet, it states that that is equivalent

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1 to the 12-foot flood elevation.
2 **Q So even if you used the prosecution**
3 **teams' estimate, by the time that the floodwaters**
4 **receded out to the ocean, there would have been a 69 to**
5 **1 dilution?**
6 A Yeah. Using their numbers, that would be
7 correct.
8 **Q Okay. And was there also evidence about**
9 **the unlikelihood of harm to fish?**
10 A We -- as part of the State's
11 investigative order, we responded with a technical
12 report explaining what methods we would try to take to
13 look at health and the ecological impact.
14 And one of the steps that we did
15 initially, was contact environmental scientists and --
16 is it okay to say his name or -- State Parks provided a
17 letter to us stating that they have been conducting
18 studies in the Oceano Lagoon for a period of eight
19 years to monitor the fish and the impacts of the
20 off-road vehicles they have on the beach crossing as it
21 crosses over to that area. And it came back noting
22 that there was no observed impact or pollution to the
23 fish population or health. And they --
24 **Q And did you also submit evidence about**
25 **the E-coli and bacteria levels in the lagoon without**

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1 **regard to the spill, just what natural levels of E-coli**
2 **would be?**
3 A Yes. As part of the technical response
4 to the State's investigation, we did supply
5 information. There were investigated test sites here.
6 These bigger locations show those tests performed by
7 the County. These smaller locations show the tested
8 locations that were performed by the District.
9 **Q And what does this show?**
10 A This is our -- I guess -- what we did is
11 we monitored for a period of one year. And what you
12 see here is -- we see, what I will consider to be
13 highly elevated, in this case, with E-coli, within
14 those locations.
15 And so this is each one of those
16 locations. It's kind of hard to see for the audience,
17 and I apologize.
18 This location is one through location
19 ten. These trend on a monthly basis up and down, and
20 you can see the variance. But at all times they're
21 highly elevated. This is the -- what is considered a
22 warm classification from what we were assessed. And
23 our assessment was that the beneficial use is already
24 highly polluted.
25 **Q Okay. And do we -- does the District**

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<p>1 have any evidence of anyone being ill due to this sewer 2 spill? 3 A We have not received, to this day, any 4 information to the District that indicated anybody did 5 get sick or -- 6 Q Did you do any outreach to people? 7 A We did a bunch of outreach. We did 8 door-to-door. We handed out flyers. We went to a 9 number of agencies, community meetings. Two of which 10 were televised. We participated with the County. They 11 held a community outreach for the flood event on April 12 30th of 2011. 13 We prepared and manned a booth with a 14 whole bunch of spill information we had with 15 overflowing manholes. We had literature. We had a 16 PowerPoint presentation going of the spills that we had 17 on record. The flood that we had. We had questions -- 18 if you knew anything, please contact us. We had a 19 sign-in sheet. Just trying to get the word out there. 20 And again, just trying to do the right thing. We just 21 wanted to do this right and fair, and get a good 22 assessment of what was happening. 23 Q And did any residents file claims for 24 damages in their homes with the District? 25 A No.</p> <p style="text-align: right;">Page 482</p>	<p>1 today -- if I'm not mistaken, they opened up the board. 2 They were able to get in there and find out that it was 3 a programming issue -- the pump had been set by the 4 manufacturer to shut down for a one-hour period. They 5 didn't know if it was something they had going on or 6 what. But it was something when the District received 7 the pump, that is the condition it came in. 8 So they had a little bit of training 9 on-site that day. They got the pump working. I think 10 by noon or so, they understood how to work it, but they 11 had to be there and available every hour. So that is 12 why you had the blips occurring. 13 Q So it was not a mechanical issue? 14 A Mechanical, no. 15 Q Okay. And you included -- the District 16 included in their estimates that were given to the 17 Water Boards, Mr. Appleton's estimate? 18 A Initially, yes, we included three 19 estimates, and within that was Jeff Appleton's estimate 20 as well. 21 MS. THORME: Okay. Could you bring up Exhibit 22 9, and I don't know exactly what the page is. 23 MS. COLLIER: Okay. 24 /// 25 BY MS. THORME:</p> <p style="text-align: right;">Page 484</p>
<p>1 Q Okay. And just to do some housekeeping 2 before I get into another issue -- are there drains 3 inside the electrical pull boxes? 4 A The pull boxes on-site, do have drains. 5 Q And where do those drains go? 6 A It's my understanding the drains go to 7 the storm drain system. The drains are directly next 8 to the headworks, go to the headworks structure. 9 That's -- 10 Q Okay. And can you talk a little bit 11 about the pump shutting off? The issue of the pump 12 shutting off? 13 A You mean the diesel bypass pump? 14 Q Yes. 15 A The diesel bypass pump was initiated 16 after the spill at the slide gate. You heard testimony 17 about that today. 18 And what the operators found out, after 19 that pump was started and once operations were going 20 and processing wastewater into the plant, the pool 21 would intermittently shut down for about every hour or 22 so. And the operators would have to scramble and try 23 to get the pump started. 24 That was just about the time that FRM 25 showed up on-site, as Jeff Appleton testified to</p> <p style="text-align: right;">Page 483</p>	<p>1 Q And did the District do some calculations 2 to correct Mr. Appleton's estimates? 3 A Yes, they did. 4 Q And those were provided to the Water 5 Board? 6 A This is -- as far as I can tell, this 7 appears to be the copy of that that went to the board. 8 You can see -- 9 UNIDENTIFIED SPEAKER: Here you go. 10 THE WITNESS: You can see some of these changes 11 here. Mr. Appleton today testified that -- you know, 12 he gave a timeline of events. That was kind of a 13 stumbling block for us as we begin our initial 14 investigation because we were initially going off of 15 his timeline. We found it to be a faulty timeline. It 16 didn't actually match up with power records, alarm 17 indications that we had on-site, and so you can see the 18 evidence. 19 At 10 a.m., which changed to 10:30, and 20 that resulted in a different value of flow. The 4 MGD 21 was changed to 4.2, because it was checked with the 22 meter, and so there some slight variations there. 23 This is the copy we submitted to the 24 Water Board (indicating). 25 MS. THORME: Okay. Can you put up Exhibit 55,</p> <p style="text-align: right;">Page 485</p>

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1 please? Okay.

2 **Q Okay. And does this show where the**

3 **storage was?**

4 A Yes, it does. This shows -- just for the

5 record, this is a treatment plant, obviously. These

6 are the sludge lagoon drying beds. This is the

7 headworks structure, and then this is the sludge

8 beds -- the lagoon beds.

9 **Q And where are the storm water sumps that**

10 **were pumping water back to the headworks?**

11 A They are located in various locations.

12 What we have is a -- we do have a site draining

13 facility. This exhibit -- that would work better for

14 you.

15 **Q No, I want to show where the flooding is**

16 **in relation to those sumps?**

17 A Okay. So what we have here is there is a

18 sump over here. You can see it at this location

19 (indicating). This actually drains. It's actually an

20 elevated pad over here that -- it has a force main that

21 pumps over here back to gravity.

22 There is another one right here. And I

23 believe there is one right here. So there is three

24 on-site.

25 The site is -- it consistently has site

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1 drains like any parking lot or parking structure

2 normally would. The majority of it is on gravity, but

3 then runs to the force mains. Those force mains pump

4 and redirect through a network of pipes, and eventually

5 work through the headworks and coming in the headworks

6 right here.

7 **Q Okay. So the sumps that were over there**

8 **in the floodwaters, were just continuing to pump that**

9 **floodwater into the treatment plant, is that the way**

10 **that I understand it?**

11 A It was -- yeah, this is the water -- this

12 is the water that had encroached on-site, so these

13 sumps over here were overwhelmed. But you can also see

14 in another picture that we don't have here, there was a

15 bunch of water back here that was overwhelming this

16 sump pump as well. So, yes, if you turn it back to the

17 headworks, and now it's going --

18 **Q So those sumps were pulling in water that**

19 **was not necessarily rainwater falling on the industrial**

20 **part of the treatment plant?**

21 A For the most part, I would say that is

22 valid especially in this area --

23 **Q Okay. And --**

24 THE REPORTER: Excuse me --

25 MR. YOUNG: Could you speak up a little bit?

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1 I'm sorry, I'm just --

2 MS. THORME: Could you move -- maybe move that

3 microphone higher?

4 THE WITNESS: Sure.

5 MS. THORME: There you go. That should be

6 better.

7 MR. YOUNG: Just for the record, he's referring

8 to Exhibit 55 dash --

9 MS. THORME: Yeah. Exhibit 55 dash, 1, yes.

10 MR. YOUNG: Okay.

11 MS. THORME: Yes.

12 **Q And the water that was stored in the**

13 **lagoons and the drying beds, was that eventually pumped**

14 **back and treated?**

15 A To the best of my knowledge, what we have

16 in the headworks structure is a manifold -- the

17 manifold valve that has one valve for each of the

18 drying beds. Those drying beds have sand filters on

19 them. The water percolates down in there and travels

20 back to a pipe in the headworks and circulates through

21 the treatment. Those just happened to be opened, and

22 it is my understanding those were opened the next day

23 and drained in the next day or two.

24 This location here, this is lined with a

25 red rock. It's designed to be somewhat impermeable.

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1 There is a manhole structure in here.

2 The reference that Jeff made about it

3 being about 30 days. That was a new statement about

4 that. I have never heard of -- to the best of my own

5 knowledge, I can only say that it would have been

6 pumped back. I can't say for sure and --

7 **Q Okay. Speaking of things that**

8 **Mr. Appleton said, he testified today that he had told**

9 **the District numerous times about the lack of the**

10 **conduit seals. Can you address that, please?**

11 A I'm not sure if I'm too familiar with

12 what you're asking, but as far as the yearly visits

13 that he made and --

14 **Q Well, he testified that he told the**

15 **District numerous times that the seals were missing and**

16 **they needed to be replaced?**

17 A Yeah, I have never heard that story

18 before until this day. And I have not heard that from

19 Appleton or anybody.

20 **Q And did you review his deposition**

21 **testimony?**

22 A I did.

23 **Q And did he mention that in his deposition**

24 **testimony?**

25 A In his written deposition testimony?

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<p>1 Q It was the date that his deposition was 2 taken by the Water Board? 3 A Oh, oh, I did review it. I reviewed the 4 majority of it, and I'm sorry, I don't recall. 5 MS. THORME: Okay. Yeah, put up Exhibit 44, 6 please. 7 Q Can you explain what this is? 8 A Yeah. This is -- what you're seeing here 9 are two things. This is an upper map. I think you 10 have seen this earlier today. This is the treatment 11 plant here (indicating). This is the Security Court 12 area here -- what I refer to as the Security Court 13 area. It is actually made up of many roads. 14 This is the lagoon. This is the lagoon 15 that encroached into the homes, working their way on to 16 the treatment plant. And it was encroaching up to 17 about a 12-foot elevation before it finally reached a 18 peak, which came across these banks here, and back to 19 the few homes in this area, and a few homes in this 20 area, and all of these homes here (indicating). 21 The significance of this picture is that 22 what we did is we took this span shot of this overhead 23 map. And what we really wanted to express was that 24 this area is in a bowl. Even though it's upstream from 25 the treatment plant -- upstream location, it dips down</p> <p style="text-align: right;">Page 490</p>	<p>1 red line is discharging sewage. Anything that has a 2 manhole above that red line, is not discharging sewage. 3 So you can see the number of facilities included, and 4 these are the 21 homes that were reported to the State 5 as part of the sewage spill. 6 Q Okay. So some of the letters that came 7 in where people that had lived on Juanita Street -- 8 A Yes. 9 Q -- can you tell me if that was near any 10 of the manholes that spilled? 11 A Juanita Street was not near any manholes 12 that spilled. And the reason it was excluded is 13 because there is a location here -- you cannot see it, 14 but this is along the ocean. It's called the Strand. 15 These home are on an isolated collection system, which 16 pumps over to a forced main lift station. That forced 17 main lift station deposits itself into the District 18 current up here at GBA, meaning it has a check valve 19 that flows in a one-way direction. 20 Okay. So even though we surcharged and 21 we would have gone down and probably impacted that 22 portion of the pipe, we wouldn't have pushed into that 23 system, because we would have been restricted from that 24 valve. 25 Q So I don't believe this had been shown</p> <p style="text-align: right;">Page 492</p>
<p>1 before it goes upstream. 2 This is where the flooding occurred. It 3 is also where our spill occurred. When the pump stops 4 we start to surcharge our lines, we discharge through 5 these low-line manholes. 6 What you can see here is -- you can see 7 the floodwater in blue. This is the swollen lagoon as 8 it is at various locations. It's difficult to see that 9 these lines extend to each manhole. So that manhole 10 right there, goes to that manhole. This one here, 11 comes to that (indicating). So this is whole area was 12 surrounded in water. 13 This area here by the G15 was surrounded 14 in water. What you see is that along here, we get 15 elevations that are, I believe to be in the 15, 16, 16 17-foot range where this manhole is here about 17 10-and-a-half feet. 18 So these manholes, in our best opinion 19 and strong understanding, that these manholes were 20 excluded from this spill. These manholes were 21 excluded. What you see these two lines being, the blue 22 being the surface elevation of the water, and the red 23 being the calculated hydraulic gradeline that existed 24 in the sewer line. 25 Anything that has this manhole below that</p> <p style="text-align: right;">Page 491</p>	<p>1 today. This is Exhibit 44. And just -- can you tell 2 us what this is -- 49, I'm sorry? 3 A What you're seeing here is basically a 4 variation of the map that you just saw. This is the 5 same map. This shows the treatment plant. This shows 6 the Security Court home locations. 7 In addition -- well, just for 8 clarification, the black solid line is the District's 9 trump line as it extends out into the satellite agency 10 to collect sewage from them. The dash lines represent 11 the satellite collection system. 12 The significance of the picture here is 13 the blue. This is the water. This is a combination of 14 our assessment and study that we performed and where 15 that water went to. It was very important for us to 16 know where that water was, what elevation it was at, so 17 that we could therefore determine that discharge rate 18 for each of those manholes. 19 Coincidentally, our calculations that we 20 came up with were within two or three inches to what 21 the county did, and it -- and with that study, again, 22 studying that and quantifying that with the volume of 23 water that passed through the lagoon. 24 The significant point I would like to 25 make here is that a board member had asked -- Mary or</p> <p style="text-align: right;">Page 493</p>

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<p>1 the last technical witness -- you know, is it possible 2 that that gradient could possibly affect that water at 3 the line or the manhole and produce a different 4 discharge. 5 The important characteristics to remember 6 is that this is a constant elevation. Water sea level, 7 this is the bottom of the bowl. This elevation is 12 8 feet. That means every manhole that is at only 12 feet 9 elevation is covered with water. 10 Manholes above 12 feet in elevation are 11 not covered in water. So that means that the same 12 pressure is present at each one of those manholes 13 relative to the hydraulic gradeline of the sewer 14 system. 15 Q Okay. Can you point out what part of the 16 entire sewer shed that this flooding occurred in? 17 A This is the boundary of the District's 18 service -- service boundary, in which all of the number 19 of agencies are encapsulated. It's the City of Arroyo 20 Grande, the City of Grover Beach, and Oceano Community 21 Services District. Down here is the wastewater 22 treatment plant, and the flooding occurred right here 23 (indicating). 24 Q Okay. Thank you. 25 MS. THORME: Can we have Exhibit 52, please?</p> <p style="text-align: right;">Page 494</p>	<p>1 These are the water ways, the streams, the creeks, the 2 oceans which are established within the general basin 3 plan, as either a warm water, fishery, a place to wade, 4 a place to drink or swim. 5 What you see here is the range on this 6 particular potential to harm is zero to five. If you 7 remember this, the State feels this spill in and of 8 itself should be a five in major. 9 Now, I would just like to kind of 10 highlight some of that. What that means, there is an 11 extremely high threat to beneficial uses. There is 12 significant impacts to aquatic life and human health. 13 There was high potential for threats in 14 the water to human health. We just don't feel that is 15 the case. It was a tragic event. It was an 16 unfortunate event. 17 But as you can see from the 18 bacteriological testing that we did in the Oceano 19 Lagoon, the Oceano Lagoon water itself was highly 20 contaminated with raised levels of bacteria. 21 BY MS. THORME: 22 Q Excuse me, Mr. Yonker, but we're going to 23 have to move on. 24 A Sorry. 25 Q So the -- I have an exhibit. This is in</p> <p style="text-align: right;">Page 496</p>
<p>1 MR. COLLIER: Okay. 2 BY MS. THORME: 3 Q Did the District propose different harm 4 factors than the prosecution team? 5 A Yes, it did. 6 Q And did these penalty factors come from 7 the 2010 enforcement policy? 8 A This is a copy of the 2010. Not a copy, 9 but it's a copy that I created of the 2010. 10 Q Okay. And -- so the District believes 11 that the harm factor should be two instead of five, and 12 why do you believe that? 13 A Julie -- I'm sorry. The State -- 14 MS. MACEDO: That's okay. We're on a first 15 name basis. Don't worry about it. 16 THE WITNESS: I'm sorry, Ms. Macedo. I'm sorry 17 about that -- did a great job of going through the 18 methodology that -- walked each of you through the 19 process, and let you see the steps that go into it. 20 Albeit, what she failed to do is really show you some 21 of the definitions that are required. She did kind of 22 talk about them. It is much easier to see them. 23 You can see here. This is factor one. 24 This is the very first factor that she worked on. This 25 is a harm for potential harm and beneficial uses.</p> <p style="text-align: right;">Page 495</p>	<p>1 rebuttal to the ability to pay stuff that was done this 2 morning. So this is Exhibit 117. I will pass it out. 3 If my time can stop while I'm passing. 4 MR. YOUNG: You have about two minutes left. 5 I'm just wondering, was that going to be sufficient for 6 you to finish with this witness? 7 MS. THORME: No. 8 MR. YOUNG: How much more time would you need 9 to -- 10 MS. THORME: Pass these down. 11 MR. YOUNG: -- to complete with this witness? 12 MS. THORME: I have just one -- we were going 13 through the penalty factors, and so that is what I have 14 remaining. I wanted to go through him and then we 15 still have closing argument. 16 MR. YOUNG: Okay. 17 MS. MACEDO: Closing is not counted in your 18 time. 19 MS. JAHR: Yes, it's separate. 20 MS. THORME: Okay. 21 MR. YOUNG: Would an extra ten minutes be 22 enough? 23 MS. THORME: It would help. Yes, thank you. 24 MR. YOUNG: Would that be sufficient for you to 25 finish?</p> <p style="text-align: right;">Page 497</p>

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1 MS. THORME: We will do our darndest.
2 MR. YOUNG: Okay.
3 BY MS. THORME:
4 **Q Okay. So can you explain what this**
5 **document is, Mr. Yonker?**
6 A This document appears to be a District
7 staff report to the board of director in the San Luis
8 Obispo Sanitation District. Subject: Monthly final
9 review. This looks like an overview of the summary
10 statement and is describing the current funds as they
11 exist for the various funds relating to those service
12 fees from the various member agencies, as well as other
13 funds --
14 **Q Okay. Mr. Yonker, if you can look at the**
15 **second page for me --**
16 A Okay.
17 **Q -- and it has different operating**
18 **different funds. Can you tell me the three different**
19 **funds that are there?**
20 A Fund 19 is the operating fund. Fund 20
21 is --
22 THE REPORTER: I'm sorry, but could you speak
23 up a little bit?
24 THE WITNESS: Yes. Fund 19 is the operating
25 level -- I'm sorry, the operating fund. And fund 20

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1 is the expansion fund, and fund 26 is the replacement
2 fund.
3 BY MS. THORME:
4 **Q Okay. So if you look at the cash with**
5 **the LAIF, and you add that row, there are some that are**
6 **negative -- well, some that are positive, and it comes**
7 **up with what the District wide amount for that cash**
8 **with LAIF?**
9 A Yes. For -- let me just see -- yeah,
10 cash with LAIF, looking at the District wide, I see
11 \$3,400,504.
12 **Q Okay. And what is the amount in the**
13 **expansion fund?**
14 A The expansion fund would be -- within the
15 LAIF?
16 **Q Yes.**
17 A That is \$5,733, -- I'm sorry \$5,733,546.
18 **Q And isn't the fund 20, the expansion, the**
19 **fund that -- the fund that is funded through**
20 **connections -- the fees that cannot be touched? That**
21 **is the reserve fund?**
22 A That is correct. As far as I know, that
23 is the fund that cannot be touched.
24 **Q Okay. And so if we can look at the --**
25 **this is the document that Dr. Horner had this morning**

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1 **when he was getting information -- is that the right --**
2 **So he was using the 5 million dollars**
3 **that included costs that were in that LAIF fund, and he**
4 **was assuming that that was all money that could be**
5 **touched, and that is not the case?**
6 A That was my understanding of his
7 statement today. And if it relates to these numbers
8 here, I would say that would not be correct.
9 **Q Okay. So this is the most current cash**
10 **flow document that we have for the District; is that**
11 **correct?**
12 A It's dated August 15th, and it talks
13 about a financial summary for July 31st, 2012.
14 **Q Okay. And what is the net income year to**
15 **date? Is it a negative number?**
16 A The net income year to date is shown as a
17 loss.
18 **Q Okay. All right. If we could go back**
19 **to --**
20 MS. MACEDO: I actually have something for the
21 record, and I don't care if it's on my time or not.
22 But is this the first time the
23 prosecution team is being provided with this documents?
24 MS. THORME: Yes, because we just got it today
25 for rebuttal to the -- Dr. Horner's testimony.

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1 MS. MACEDO: So presumably this document
2 existed as of August 15th, 2010, correct?
3 MS. THORME: 2012.
4 MS. MACEDO: 2012 -- I'm sorry. Correct?
5 MS. THORME: I would believe so, that is the
6 date of it.
7 MS. MACEDO: And so when I asked you if
8 Dr. Horner could leave, and you said yes, and then this
9 document comes up at 10:00 at night, you knew
10 Dr. Horner would not be able to respond to this
11 document. I just wanted that on the record.
12 You can continue.
13 MS. THORME: Okay. So if we can go to Exhibit
14 52-8?
15 **Q Okay. So the Office of Enforcement is**
16 **proposing 1.1 for culpability; is that your**
17 **understanding?**
18 A That's correct.
19 **Q And the District believes that lower**
20 **number would be a better number; is that correct?**
21 A We had assessed it and determined it
22 should be a lower number, so somewhere around 3.5
23 and -- point 9.
24 **Q And quickly, can you say why?**
25 A Sure. The testimony is what a reasonable

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1 and prudent person would have done or not done under
2 similar circumstances.
3 This is a circumstance relating to the
4 December 19th spill, and in our opinion, everybody on
5 that site was doing everything they could to return
6 that plant back into a normal operating plant.
7 They -- and again, this was an act of God
8 event. The bypass event, the diesel pipe was in place
9 prior to the spill --
10 **Q And it was an emergency situation?**
11 A And this was an emergency situation.
12 **Q Okay. So then the other factor is the**
13 **cleanup and cooperation. And so the Office of**
14 **Enforcement is proposing a one, is that your**
15 **understanding?**
16 A That's correct.
17 **Q And the District is proposing a lower**
18 **number, and what is the main reason for that?**
19 A Well, the District has gone to great
20 lengths. We have provided numerous documents. We have
21 basically laid everything we have on the table. We
22 have been cooperative with the State.
23 We have attended numerous meetings up in
24 Sacramento just to make sure that they understand it
25 and accept it and see where we're coming from. It's

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1 obvious tonight, they don't. They still think we're
2 referencing tables that weren't mathematically and
3 inherent based equations. But we have gone, in our
4 opinion, above and beyond what we could do to try to
5 help and support and come to an even agreement and do
6 what is fair and --
7 **Q Okay. And did the District provide**
8 **evidence of a large loan commitment that it has for its**
9 **cogeneration plant?**
10 A Yes.
11 **Q And just for reference, for the board**
12 **members, that was in Exhibit 94.**
13 **And did the District also do a**
14 **sensitivity analysis to see how the penalty would**
15 **change if the penalty factors were modified?**
16 A It did.
17 **Q And now we would have you look at Exhibit**
18 **61.**
19 **Okay. I am going to reserve the rest of**
20 **my time for redirect.**
21 MS. MACEDO: Okay.
22
23 CROSS-EXAMINATION
24 BY MS. MACEDO:
25 **Q So Mr. Yonker, it's your position that**

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1 **the State Board required you to report every spill**
2 **location; isn't that right?**
3 A To report every spill location?
4 **Q Right.**
5 A Yes, correct.
6 **Q Why didn't you report then, the headworks**
7 **as a discharge point?**
8 A The headworks had -- from my
9 understanding, headworks was discharging up and over
10 the top of the headworks structure back at headworks
11 itself, and there was some stuff that was coming out
12 and adjacent to the plant.
13 That was all part of that ponding that
14 you saw in that picture, which was headed to a drain
15 works, which is headed right back in the headwork
16 structure itself.
17 So at the time, the draining system at
18 the plant was returning that wastewater to the
19 headworks structure back to the structure to my -- to
20 the best of my knowledge, that was the situation
21 reported.
22 **Q So you disagree with Mr. Appleton's**
23 **testimony that it represents -- and I guess,**
24 **Dr. Buffleben's testimony, that it was actually a**
25 **rather significant discharge at that point?**

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1 A I do. I did not hear testimony from
2 either of them about the elevation of that grade or
3 that --
4 THE REPORTER: Excuse me --
5 THE WITNESS: -- that grade relative to the
6 hydraulic gradeline on that system, so I disagree with
7 them, yes.
8 BY MS. MACEDO:
9 **Q I believe the District showed a slide**
10 **show that was a presentation of sort of acceptable**
11 **methods for calculating SSO's, and one of them was the**
12 **duration of the flow method. And you heard testimony**
13 **today, that it acceptable in certain instances and in**
14 **some instances, we should consider it unreliable.**
15 **What is your understanding of the**
16 **duration and flow method?**
17 A Well, the duration and flow method, as
18 was indicated in the State's response, is a method
19 which -- which they still support in this particular
20 case. They felt it would have been appropriate for a
21 single manhole. So to that I would say that
22 individually, these were single manholes. We took --
23 we looked at each one individually and got responses
24 from each one of those hydraulically based upon the
25 principals and back to the flow equations.

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<p>1 Q Yeah.</p> <p>2 A And what I did see, is I saw several</p> <p>3 manholes that were discharging pit hole locations. You</p> <p>4 saw testimony of those today in photographs that showed</p> <p>5 pit hole locations coming out of that water way that</p> <p>6 are in line with the pit hole height, which are</p> <p>7 spreadsheet calculations determined as they should be.</p> <p>8 Q Yeah. I don't mean to interrupt you, but</p> <p>9 in terms of my question, I meant, you know, how is it</p> <p>10 applied? Is it something that you have to be there</p> <p>11 contemporaneously to observe the flow at the time it is</p> <p>12 occurring?</p> <p>13 A The way the State Board understood it to</p> <p>14 mean, is they --</p> <p>15 Q I'm sorry. I'm asking for your</p> <p>16 understanding.</p> <p>17 A My understanding is, no. You do not need</p> <p>18 to be there to make those kinds of assessments with the</p> <p>19 hydraulic relationship to the discharge --</p> <p>20 Q Okay. So let me ask you two questions.</p> <p>21 One, did you attend the State Board,</p> <p>22 either training or -- you know, program that was put on</p> <p>23 that you submitted --</p> <p>24 A I did not attend.</p> <p>25 Q Okay. And secondly, when you or the</p> <p style="text-align: right;">Page 506</p>	<p>1 put -- they have to be up to speed on all the issues,</p> <p>2 so they can testify accurately. So we have designated</p> <p>3 Mr. Yonker as the person most knowledgeable. So when</p> <p>4 she's saying "you," I want to make it clear, it's the</p> <p>5 District.</p> <p>6 MS. MACEDO: But I believe I'm allowed to ask</p> <p>7 Mr. Yonker questions as an individual, correct?</p> <p>8 MS. THORME: We did not put him on as an</p> <p>9 individual.</p> <p>10 MS. MACEDO: So you're only allowed to testify</p> <p>11 as a District, not as an individual?</p> <p>12 THE WITNESS: I would say that is a legal</p> <p>13 question to be decided.</p> <p>14 MR. YOUNG: You know --</p> <p>15 MS. MACEDO: Okay.</p> <p>16 MR. YOUNG: -- let me just think about this.</p> <p>17 He still has to have knowledge of all of</p> <p>18 these things he's testifying to --</p> <p>19 MS. THORME: Right. And he does --</p> <p>20 MR. YOUNG: -- as an individual.</p> <p>21 MS. THORME: Right. He does have knowledge</p> <p>22 because he's gotten up to speed on all of the topics.</p> <p>23 So he can testify to all the topics, but he may not</p> <p>24 have personal knowledge of each thing.</p> <p>25 MR. YOUNG: Okay. So he's been given</p> <p style="text-align: right;">Page 508</p>
<p>1 District used the duration of the flow method, is --</p> <p>2 was all your methodology conducted after the fact, in</p> <p>3 that you were not present during the spill?</p> <p>4 A It was conducted after the fact --</p> <p>5 MS. THORME: Judge, I want to object, because</p> <p>6 he's not testifying personally. He is the mouthpiece</p> <p>7 of the District, because the District as an entity,</p> <p>8 cannot testify. So she keeps asking, "you," "did you,</p> <p>9 so I just want it to be clear that he is not testifying</p> <p>10 as Mr. Yonker. He's testifying as a person most</p> <p>11 knowledgeable for the District.</p> <p>12 MR. YOUNG: Okay.</p> <p>13 DR. WOLF: May I ask a question?</p> <p>14 THE WITNESS: Sure.</p> <p>15 DR. WOLF: Could you be a little more specific</p> <p>16 than most knowledgeable --</p> <p>17 MS. THORME: Okay --</p> <p>18 DR. WOLF: -- I mean, his business card must</p> <p>19 say something else.</p> <p>20 MS. THORME: An entity cannot testify. So you</p> <p>21 can't put the District in the witness seat, because the</p> <p>22 District does not -- is not a person. It cannot talk.</p> <p>23 So on behalf of the District -- and this is normal in</p> <p>24 legal cases when an entity has to speak -- you</p> <p>25 designate a person most knowledgeable. And they are</p> <p style="text-align: right;">Page 507</p>	<p>1 information, because he's testified as to the funds,</p> <p>2 right --</p> <p>3 MS. THORME: Right.</p> <p>4 MR. YOUNG: -- and things of that nature.</p> <p>5 But are you a civil engineer?</p> <p>6 THE WITNESS: I'm a civil engineer, yes.</p> <p>7 MR. YOUNG: Okay. Do you have a background in</p> <p>8 accounting?</p> <p>9 THE WITNESS: I do not, but I have been</p> <p>10 actively involved with numerous special Districts. I</p> <p>11 do --</p> <p>12 MR. YOUNG: But with this District, are you</p> <p>13 typically involved?</p> <p>14 THE WITNESS: I have not been as involved. I</p> <p>15 have helped out a little bit with creating budgetary</p> <p>16 estimates for the fiscal year budgets. With other</p> <p>17 Districts, I have actually created fiscal year budgets.</p> <p>18 MR. YOUNG: And on an ongoing basis, what is</p> <p>19 your relationship with this District?</p> <p>20 THE WITNESS: I have been providing engineering</p> <p>21 services now for several years for this --</p> <p>22 THE REPORTER: Excuse me, but did you say</p> <p>23 "seven" or "several"?</p> <p>24 THE WITNESS: I said several years, perhaps for</p> <p>25 four years or so of many different types of work.</p> <p style="text-align: right;">Page 509</p>

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<p>1 Primarily in design specifications for rehabilitation 2 repair of their capital improvement budget within the 3 collections systems, as well as the treatment plants. 4 So I have become quite familiar with that facility 5 regarding the collection system, regarding the 6 treatment plant. 7 And the facility, specific to this 8 particular case, I have attended board meetings. I 9 have made recommendations for staff reports. I do a 10 coordination study for the District, coordinate with 11 the satellite agencies and train them on sewers 12 response collectively. 13 So I have been involved with this 14 District to the point where I'm comfortable. I'm 15 knowledgeable. I'm not an administrator or the 16 District engineer, but I do serve functions of those 17 tasks. 18 MR. YOUNG: And who do you report to, 19 Mr. Wallace? 20 THE WITNESS: I am employed by the Wallace 21 Group. 22 MR. YOUNG: And do you report to Mr. Wallace? 23 THE WITNESS: I report to my direct manager. 24 MR. YOUNG: And who is that? 25 THE WITNESS: Mr. Zander (phonetic).</p> <p style="text-align: right;">Page 510</p>	<p>1 DR. WOLF: Yeah. The last one minute. 2 THE WITNESS: Okay. Sorry. 3 DR. WOLF: Sorry, but I couldn't hear you. 4 THE WITNESS: I -- I have been -- assuming you 5 heard everything else that I do for the District and my 6 services, I have been very active in this spill since 7 the very beginning. I was not there the day of the 8 spill. I did receive a call that night with questions 9 about what may be happening in the collection system, 10 based upon my knowledge of the collection system. I 11 have done a lot of work with the collection system. 12 And from that point on, I began being 13 very involved with it. I helped author and perform the 14 initial five-day report that was due January 3rd of 15 2011. 16 I helped prepare the May 31st technical 17 response to the State's investigative report of 2011. 18 I have also attended numerous -- approximately seven or 19 eight meetings. I was there March 18th when 20 Mr. Sarmiento and Mr. Fischer came down and did the 21 initial investigations. 22 So I have been fairly active in this 23 particular incident. In areas where I've been called 24 upon to be the most competent for the District, I have 25 gotten up to speed. I have read various --</p> <p style="text-align: right;">Page 512</p>
<p>1 MR. YOUNG: Mr. -- 2 THE WITNESS: Mr. Tom Zander. He works -- he's 3 the principal of the Wallace Group. 4 MR. YOUNG: Yeah. And so the information that 5 you're testifying to, is it coming collectively from 6 different people within the District? 7 THE WITNESS: It is coming collectively. It 8 has come from speaking with various operator people 9 that were there the day of the event. I received a 10 call the day of the event to get information about the 11 collection system where it may be spilling. 12 I have been involved extensively with the 13 State Operations Enforcement. I have been involved in 14 nearly, if not all, correspondence back and forth 15 between the District. I spent time there for about 16 seven or eight meetings as we tried to work out the 17 situation. So I'm basically aware of this particular 18 incident -- so -- 19 DR. WOLF: Could you speak a little louder? 20 MS. THORME: Yeah, you've got to keep that 21 microphone up. 22 DR. WOLF: I'm really having a hard time 23 hearing you. 24 THE WITNESS: I'm sorry. I'm not used to 25 speaking in a microphone. Should I repeat anything?</p> <p style="text-align: right;">Page 511</p>	<p>1 MR. YOUNG: Well, the term is actually "most 2 knowledgeable," not "most competent," to testify. 3 THE WITNESS: Most knowledgeable. My 4 apologies. 5 MR. YOUNG: So -- 6 DR. WOLF: I was quite impressed. 7 THE WITNESS: Most knowledgeable, for this 8 particular hearing. 9 MR. YOUNG: Okay. 10 BY MS. MACEDO: 11 Q Well, I will ask my questions, and if 12 there is any clarification about whether you can't 13 answer it or whether you're answering it individually, 14 I'm happy to have the distinction. I didn't realize 15 that you could not testify as an individual. 16 You had a slide up where you had made 17 notes that Mr. Appleton had provided, and you claimed 18 that there was some faulty time line, and that you were 19 correcting it, and yet you just testified that you were 20 not on the site the day of the spill, and yet, 21 Mr. Appleton was. And so I'm wondering what gave you 22 the authority to change the time line? 23 A Well, one of the differences I saw on the 24 time line was the time line that Mr. Fischer put up 25 there during his testimony -- it varied drastically</p> <p style="text-align: right;">Page 513</p>

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1 from what Mr. Appleton was saying as well.
2 The District actually had a difficult
3 time with Mr. Appleton's investigations and timeline
4 initially, because we tried to piece that together to
5 create what had happened on-site. And we were finding
6 that was not the case on the site that day. We did an
7 investigation on the power consumption records to see
8 when and where the pumps actually failed.
9 We investigated the alarm call outs. We
10 spoke with people who were at that site and knew what
11 time they arrived and it differed from what
12 Mr. Appleton had said what had happened. Initially, he
13 had reported to the State that the spill began at 9:30
14 or 10:00. It was initially -- it had to be resolved by
15 the State, and there was some confusion there.
16 So I understood there was some concern
17 may be that the spill started earlier, but this was
18 stuff that we pieced together slowly. And I still
19 disagree with Mr. Appleton's time frame.
20 BY MS. MACEDO:
21 **Q So that is clearly a response as a person**
22 **most knowledgeable, since you weren't there on the day**
23 **of --**
24 A It is a response of the person most
25 knowledgeable --

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1 THE REPORTER: Excuse me --
2 THE WITNESS: -- and by others. And as far as
3 pulling the power consumption, once power consumption
4 was reported, I can then analyze it and make that
5 decision. It's something I can believe in and I can
6 trust.
7 BY MS. MACEDO:
8 **Q Okay. In terms of the rain event, I**
9 **would point you to your Exhibit 45. And this is an**
10 **exhibit that you provided. And on December 19th -- I**
11 **think we actually are not that far off. We submitted**
12 **these rain totals, and I think they are very much in**
13 **line with yours. And yet when we got to the penalty**
14 **calculator, you claim -- well, I will take it from**
15 **another angle.**
16 **Do you know what the permit requirements**
17 **requires the storm level to be protected against?**
18 A I believe it's a hundred years --
19 THE REPORTER: I'm sorry, you need to repeat --
20 THE WITNESS: It's a one-hundred-year-storm
21 event.
22 BY MS. MACEDO:
23 **Q Okay. And do you know what -- based on**
24 **these rainfall totals, do you have an approximation of**
25 **what this worked out to be?**

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1 A I have heard various statements. I can't
2 look at those numbers and say there are tables,
3 which -- but they're both durational based, as well as
4 volume based. So a 24-hour duration in terms of that
5 2.7, you know, that 2.7 might have peaked at 2:00 in
6 the afternoon, and then been excessive until 3:00.
7 That would be a 24-hour period that would need to be
8 considered for that analysis, and I can't talk about
9 these numbers here.
10 **Q Okay. Do you agree that the five or so**
11 **inches does not rise to the level of one-hundred-year**
12 **flood?**
13 A As far as I know, over that duration, I
14 do not think that is a one-hundred-year flood.
15 **Q Okay. And yet on your penalty**
16 **calculation factor slides, you described this as an act**
17 **of God event. Do you know where you got that**
18 **terminology?**
19 A Well, act of God -- in many ways. The
20 tree getting stuck in the flap gate. Washing its way
21 down to the headworks. Intruding the headworks and
22 shorting out of the pumps. The flood event that came
23 up, I would probably say a lot of these community
24 members would call this potentially an act of God
25 event. This was a significant event is maybe

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1 mischaracterizing that term.
2 **Q Okay. So you're describing it similar to**
3 **any rainfall being an act of God, the way you're using**
4 **the term?**
5 A I would not say so because this was a
6 very unique situation. As I mentioned previously in my
7 testimony, this was a large watershed. It rained the
8 day prior. It just made its way down to the lagoon
9 while the new rain fell on top of it, and
10 increased the situation -- the confluence there with
11 the two together, it did not work right. There was
12 substantial flooding. That was a situation more than a
13 normal rainy Saturday.
14 **Q Is it your understanding that the**
15 **District ever intentionally bypassed treatments during**
16 **December 19th or 20th?**
17 A Intentionally bypass treatment, yes. We
18 pumped --
19 MR. JOHNSTON: Can you speak up, please?
20 THE WITNESS: I'm sorry.
21 I guess, if you refer to the pumping --
22 or the -- the temporary pumping from the headwork
23 structures to the -- beds --
24 BY MS. MACEDO:
25 **Q Okay.**

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<p>1 A -- that temporarily bypasses them.</p> <p>2 Q Okay. Do you account for energy loss in</p> <p>3 your methods?</p> <p>4 A Can you define "energy"?</p> <p>5 Q I'm not an engineer, so you are.</p> <p>6 Tell him what it is like, Matt.</p> <p>7 (Brief pause in proceedings.)</p> <p>8 BY MS. MACEDO:</p> <p>9 Q How much head was in the system?</p> <p>10 A We accounted for head in the system by</p> <p>11 establishing hydraulic grade line.</p> <p>12 Q Okay. Where are your observations of the</p> <p>13 grade?</p> <p>14 A We observed the grade in numerous</p> <p>15 locations, primarily on the plant itself.</p> <p>16 Q Okay.</p> <p>17 A At two locations.</p> <p>18 Q Where were those locations?</p> <p>19 A We saw that occurring at the manhole,</p> <p>20 which we monitored throughout the duration of the</p> <p>21 spill.</p> <p>22 Q I'm sorry, did you say the manhole?</p> <p>23 A There is a manhole which we use. I</p> <p>24 believe it was GB2. It is where the physical pump was</p> <p>25 actually installed. And that is where we at one point</p> <p style="text-align: right;">Page 518</p>	<p>1 rainfall totals -- you can see we have had those</p> <p>2 rainfall totals before, and we have not had that</p> <p>3 flooding issue in the past.</p> <p>4 MS. THORME: Okay. No further questions.</p> <p>5 MR. YOUNG: Okay. Mr. Johnston?</p> <p>6 MR. JOHNSTON: I have a couple of questions for</p> <p>7 you.</p> <p>8 You contradicted some of Mr. Appleton's</p> <p>9 testimony regarding his assertion that there had been</p> <p>10 multiple discussions with the District regarding seals,</p> <p>11 and the lack of seals in that vault.</p> <p>12 And your statement was that you believe</p> <p>13 that to be incorrect; is that right? Did I correctly</p> <p>14 characterize that?</p> <p>15 THE WITNESS: I am not sure if that is correct.</p> <p>16 MR. JOHNSTON: Okay. And so -- and let me just</p> <p>17 ask you, since you're -- and I understand you're</p> <p>18 testifying as -- for the District, not as an</p> <p>19 individual.</p> <p>20 Do you have any way of knowing as to</p> <p>21 whether Mr. Appleton's testimony was correct or not?</p> <p>22 THE WITNESS: Regarding his annual meetings</p> <p>23 with the Board of -- I'm sorry, with the Board of</p> <p>24 Directors on-site --</p> <p>25 MR. JOHNSTON: He stated that in the period</p> <p style="text-align: right;">Page 520</p>
<p>1 pulled off the manhole cover, and we could see the</p> <p>2 sewage within there. And we could see the grade, which</p> <p>3 we were trying to catch up, because we were pumping at</p> <p>4 a higher capacity that the sewer water was dropping</p> <p>5 down.</p> <p>6 MR. YOUNG: Ms. Macedo, your time is up.</p> <p>7 MS. MACEDO: Okay. That's fine.</p> <p>8 MR. YOUNG: Okay. Any redirect?</p> <p>9 MS. THORME: Just one question.</p> <p>10</p> <p>11 REDIRECT EXAMINATION</p> <p>12 BY MS. THORME:</p> <p>13 Q How much rain would it have taken to have</p> <p>14 one to two feet of flooding the way it was in the</p> <p>15 Oceano area, if the flap gates hadn't been opened at</p> <p>16 one end and closed at the other?</p> <p>17 A How much rain that is over that same</p> <p>18 location?</p> <p>19 Q Yes.</p> <p>20 A I don't know -- I don't have my</p> <p>21 calculator. I don't know. I don't know.</p> <p>22 Q Okay. And has there been any similar</p> <p>23 rain events that haven't caused this flooding in the</p> <p>24 past?</p> <p>25 A Yes, we have had many -- well, the</p> <p style="text-align: right;">Page 519</p>	<p>1 between 2004 and 2010, that he had brought up multiple</p> <p>2 times, the question of the seals. Yes, in those</p> <p>3 meetings.</p> <p>4 THE WITNESS: I cannot specifically state that</p> <p>5 that is the case, no.</p> <p>6 MR. JOHNSTON: That you can't speak to the</p> <p>7 truth of the matter, one way or the other?</p> <p>8 THE WITNESS: I guess it would be speculation.</p> <p>9 MR. JOHNSTON: Thank you.</p> <p>10 The -- can I look at 49-2, for just a</p> <p>11 minute?</p> <p>12 MS. THORME: Which exhibit?</p> <p>13 MR. JOHNSTON: 49-2.</p> <p>14 MS. JAHR: 49-2.</p> <p>15 MR. JOHNSTON: Thank you.</p> <p>16 Can you show me in the sewer treatment</p> <p>17 plant where the headworks is?</p> <p>18 THE WITNESS: Sure. What you have right here</p> <p>19 is the border of the treatment plant shown on this red</p> <p>20 line here (indicating).</p> <p>21 And you can just barely make out these</p> <p>22 various facilities. These are the secondary treatment</p> <p>23 portions.</p> <p>24 The headwork itself is right where this</p> <p>25 black line extends down, and this dash line comes</p> <p style="text-align: right;">Page 521</p>

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<p>1 across. Those are two sewer lines that connect in the 2 headwork structure right there. So this is the flap 3 gate water valve that I was talking about where the 4 stick that had entered in and allowed that Arroyo 5 Grande Creek to flow backwards into the lagoon, cross 6 the headworks structure and impact the structure right 7 there. So it was more than just standard day ponding. 8 This is actually floodwater at a great depth. 9 MR. JOHNSTON: Okay. So -- the reason I'm 10 asking is because there was another -- I believe it was 11 45-1, I'm not sure. There was another graphic that 12 showed water ponding around the headworks -- maybe it's 13 a different -- no, that's not it. It's the one before 14 that. 15 Water ponded around the headworks, and -- 16 okay. Well, I don't know the number. 17 MS. JAHR: Is it the two pictures? 18 MR. JOHNSTON: It showed -- it showed in 19 different colors, a small pool of water around the 20 headworks -- 21 THE WITNESS: That's it. 22 MR. JOHNSTON: Thank you. 23 When I look at that -- and the reason I'm 24 asking this is because of the question that 25 Mr. Appleton raised about the sewage coming out of the</p> <p style="text-align: right;">Page 522</p>	<p>1 working on that, I will start explaining it to save 2 time. 3 Again, this is -- oh, thank you. 4 This is the headworks structure here 5 (indicating). This is the blue portion, which 6 Mr. Johnston is referring to. And also this is the 7 flooded location around the headworks, which he is 8 saying, how can those two things exist solely and not 9 put together and not cause an issue. 10 What you see here is a site drain. So 11 this is a bermed up section. We are required to treat 12 under our NPDS permit, to treat all storm water 13 collection that comes on. So we do collect that storm 14 water. Not to say, it's not -- that it is going to get 15 breached. It's clearly getting breached over here, and 16 it is getting breached over here. 17 But I guess my assumption would be that 18 this water here is entering a drain system here. 19 There's several drain systems throughout the system. 20 And again, as I mentioned earlier, that is returned 21 back to the headworks. So that is one possible 22 scenario. 23 I'm not saying that I can fully attest to 24 that, but that is what I would imagine would likely to 25 have happened.</p> <p style="text-align: right;">Page 524</p>
<p>1 gate of the headworks -- 2 THE WITNESS: Yes. 3 MR. JOHNSTON: -- and there have been numerous 4 questions on the part of the District's counsel, as to 5 whether anybody established whether that sewage 6 actually left the premises. 7 THE WITNESS: Okay. 8 MR. JOHNSTON: And when I look at this diagram, 9 it seems to indicate that there is a pool around the 10 headworks, that is not connected to the light and dark 11 blue pools on the left that is storm water flooding. 12 THE WITNESS: That's correct. 13 MR. JOHNSTON: Now, when we look at the 49.2 -- 14 can we have 42.2 again? 15 MR. COLLIER: Yes. 16 MR. JOHNSTON: That seems to indicate that the 17 headworks are in a flooded area, that is actually 18 physically connected to the whole rest of the flooded 19 area. Can you explain that discrepancy? 20 THE WITNESS: Sure. Is there a way to possibly 21 pull both of those pictures up at the same time? 22 MS. THORME: No, sorry. 23 MS. MACEDO: You're asking for a lot now. 24 MR. HARRIS: She's good. 25 THE WITNESS: Perhaps I can just -- as she's</p> <p style="text-align: right;">Page 523</p>	<p>1 MR. JOHNSTON: Okay. So can you show me the 2 location of the berm? 3 THE WITNESS: Yes, if it's in this drawing. 4 MR. YOUNG: He would need to -- 5 MS. THORME: Bigger. 6 THE WITNESS: I'm not sure if there is 7 topography on this map or not. Some of them have it 8 and I could show that. I'm still having a hard time 9 seeing it. I do see lines here, and it's showing 10 various topography on the map on the system. But there 11 is a curve here, and I'm sure there is an elevation 12 line, which I can't read from here, which would extend 13 down here. 14 MR. JOHNSTON: Okay. But the headworks was 15 basically connected by surface floodwater to the rest 16 of the flood, and your assumption is that even though 17 there was water flowing out of headworks, that it was 18 being pumped along with all the rest of the water, back 19 in the headworks? 20 THE WITNESS: I would not make a statement that 21 there was no wastewater that exited. I can't do that. 22 I can say that there is a storm drain there that does 23 accumulate that water back to the headworks. That is 24 what it is showing in this picture. 25 But you are correct, there is water</p> <p style="text-align: right;">Page 525</p>

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<p>1 clearly passing from the Arroyo Grande Creek down to 2 that location and exasperating the flooding. So 3 obviously it came from onsite -- offsite. I'm not sure 4 if it is spilling on the plant or off the plant, or how 5 it's happening, but it very likely.</p> <p>6 MR. JOHNSTON: Okay. And finally I'd like to 7 ask you a little bit about the financial statement that 8 we received, as part of your testimony.</p> <p>9 Now, can you explain the -- fund 20 is 10 labeled "expansion"?</p> <p>11 THE WITNESS: Yes.</p> <p>12 MR. JOHNSTON: Are you familiar with the 13 funding and budgeting mechanisms of this particular 14 District?</p> <p>15 THE WITNESS: I am probably not as experienced 16 as I need to be, but I can certainly try to answer your 17 question. If you have a question specific about that, 18 I do know some.</p> <p>19 MR. JOHNSTON: Okay. Well, my question is, is 20 all of the money in fund 20, the result of collection 21 fees or is that intermingled with any other money?</p> <p>22 THE WITNESS: There's --</p> <p>23 MR. JOHNSTON: Is there discretionary money 24 that the Board has put in at one point or another for 25 an expansion fund?</p> <p style="text-align: right;">Page 526</p>	<p>1 THE WITNESS: I have asked it a different way. 2 I have asked where the funds come from to operate the 3 fund. I was told fund 19 is pure rates. And fund 20 4 is funded through hook ups, and fund 26 is a transfer 5 from 19.</p> <p>6 MR. JOHNSTON: Okay. And were you told fund 20 7 is funded primarily through the hook up --</p> <p>8 THE WITNESS: I did not ask it with that 9 specific terminology. But I assume that is the case, 10 but I can't --</p> <p>11 MR. JOHNSTON: Thank you.</p> <p>12 THE WITNESS: I didn't ask so.</p> <p>13 MR. JOHNSTON: I'm done.</p> <p>14 MR. YOUNG: Mr. Jordan.</p> <p>15 MR. JORDAN: Thank you, Mr. Chair.</p> <p>16 So staying on that same form between the 17 time that counsel is handing it out and panicking about 18 her time, I've got even less than that probably.</p> <p>19 So where on this form does it show 20 monthly revenues from your customers?</p> <p>21 THE WITNESS: This form is not showing -- what 22 you're seeing here is -- if you go back to page one -- 23 if you're looking at page two, go back to page one, 24 please.</p> <p>25 You will see an overall monthly summary,</p> <p style="text-align: right;">Page 528</p>
<p>1 THE WITNESS: Well, what you see here, is you 2 see fund 19 operating on fund 20 expansion and fund 26 3 replacement. That fund 19 operating fund is 4 established and funded primarily from rates. Those are 5 the collection -- the sewer rates, that occur on a 6 monthly basis.</p> <p>7 Fund 20 is funded primarily from 8 hook-ups. So in other words, if a new home hooks up to 9 that and pays the connection fee, that is what funds 10 that fund.</p> <p>11 MR. JOHNSTON: What are the other sources of 12 funding for fund 20?</p> <p>13 THE WITNESS: As far as I know, that is a 14 hook-up fund only.</p> <p>15 MR. JOHNSTON: Can you state that with 16 certainty?</p> <p>17 THE WITNESS: I can state that that is what I 18 believe with certainty. I can't say that is correct, 19 but I believe that is the case. But I guess with 20 ultimate certainty, then I would say, no. That is what 21 I'm led to believe about fund 20, it's hook up for --</p> <p>22 MR. JOHNSTON: You've asked the question -- in 23 other words, of other people in the District, as to 24 whether or not fund 20 is composed exclusively of 25 hook-up fees?</p> <p style="text-align: right;">Page 527</p>	<p>1 and what you're seeing there is during the month of 2 July, the District received payments for June's sewer 3 services that would be fund 19, in a total amount of -- 4 there is a dollar amount there from each of the various 5 member agencies, the City of Arroyo Grande, the City of 6 Grover Beach, and the -- CSD.</p> <p>7 There was a \$2,475 fund 20 connection fee 8 in Arroyo Grande for the month of June. For the month 9 of July, \$1,877 that was earned for the --</p> <p>10 THE REPORTER: Excuse me, could you speak up 11 more?</p> <p>12 THE WITNESS: So -- but that paragraph right 13 there, you can see, it states where their incomes are 14 coming from on a monthly --</p> <p>15 MR. JORDAN: So is this \$276,000 represented in 16 multiple numbers in that fund 19?</p> <p>17 THE WITNESS: Um, as I understand it, this is a 18 cash balance statement at the time, and these funds are 19 put into that to represent that current balance.</p> <p>20 MR. JORDAN: Okay. And in fund 20, what is 21 that money used for?</p> <p>22 THE WITNESS: Fund 20 is expansion. For 23 instance, a lot of the long-range planning that we 24 heard earlier today, that was recommended by Mr. Thoma 25 (phonetic) --</p> <p style="text-align: right;">Page 529</p>

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1 MR. JORDAN: The capital projects?
2 THE WITNESS: Exactly.
3 MR. JORDAN: Okay.
4 THE WITNESS: So that would be secondary
5 treatment processes, the new centrifuge, that was just
6 recently purchased. The chlorine contact tank, which
7 we built a few years ago.
8 MR. JORDAN: And you're not in any position to
9 provide a list with an itemized budget of what those
10 projects would be?
11 THE WITNESS: I'm sorry --
12 MS. THORME: That was an exhibit, and the
13 budget is in an exhibit.
14 MR. JORDAN: For what years?
15 MS. THORME: For 2012.
16 MR. JORDAN: Okay. You better help me with
17 that exhibit number, if you can.
18 MS. THORME: It's Exhibit 36, is the adopted
19 2012-2013 budget.
20 MR. JORDAN: Okay. Thank you.
21 And do you know then, if that designation
22 of those use of funds, either in the next years' budget
23 or in any future years projected in the capital
24 projects, can be modified or changed by the District
25 directors?

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1 THE WITNESS: As I understand it, projects that
2 have carry-over budgets or have had carried budgets
3 over in the following year, if not extended, I think
4 they can be changed. But it can only --
5 MR. JORDAN: And it's if they have a specific
6 list of items, then you designated specific items for a
7 specific price that are going to be accomplished in the
8 next year, or the prior year after --
9 THE WITNESS: Yeah.
10 MR. JORDAN: -- and then represented by this 4
11 million some dollars there, can those actions be
12 changed by your District Board?
13 THE WITNESS: Well, I understand that they can.
14 We do a five year look out on the projects, and we
15 assign that money over a five-year period. And if
16 things change in that period, I'm sure they can be
17 allocated.
18 MR. JORDAN: Okay.
19 THE WITNESS: I believe we have all the money
20 allocated towards projects.
21 MR. JORDAN: And then in your role with the
22 District, or as the District, were those your actions
23 that changed the SOP, in regards to the gate being
24 closed and after the event?
25 THE WITNESS: It's not the actual gate, but

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1 it's a valve --
2 MR. JORDAN: It's a valve.
3 THE WITNESS: -- and no, I did not do that.
4 MR. JORDAN: Okay. But was it somebody in the
5 Wallace Group that did it?
6 THE WITNESS: If I remember correctly, it
7 looked like it was written by Bob --
8 THE REPORTER: I'm sorry --
9 THE WITNESS: He's --
10 THE REPORTER: -- excuse me, what was the name
11 you said?
12 THE WITNESS: Bob.
13 MS. MACEDO: Bob.
14 THE WITNESS: Bob Barlogio. I think it's
15 B-a-r-l-o-g-i-o. He is the chief operator.
16 I think he -- maybe I'm getting the order
17 wrong, but it's prepared by and reviewed by or approved
18 by, so it was done by the operator.
19 MR. JORDAN: And then the same type of question
20 on the pumps. On the purchase of the pump that -- for
21 a period of time it is either unknown or unrealized,
22 that it's only going to run for an hour, and then it
23 terminates. Who does that, and how does that happen?
24 THE WITNESS: Well, we're restricted -- I will
25 go into a little detail to kind of help you with

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1 this -- we're restricted from operating that pump for
2 an extended period of time probably by our APCD permit.
3 But it restricts us from putting particulates
4 (phonetic) in the air.
5 But primarily more so from running that
6 pump that low, because we just can't produce those
7 types of flow. We would have to shut down the
8 wastewater treatment plant to produce those surcharge
9 lows. We just can't get 10 MGD's so that is not a pump
10 that we have run for an extended period of time.
11 When we turn it on, it pulls water so the
12 one hour duration, I think, we just have never exceeded
13 it. It's never been in a situation where we need to
14 for temporary projects where we bypass temporarily.
15 But I don't think we have ever been in a situation
16 where we shut down like that.
17 MR. JORDAN: Was that your assertion of one of
18 the goals or the rewards of the District going out and
19 purchasing that pump is that you had a backup pump in
20 place that would handle an emergency?
21 THE WITNESS: That's correct, and it does.
22 MR. JORDAN: Except for this one?
23 THE WITNESS: No -- well, I believe this pump
24 would have handled it if it had not been for the other
25 incidents that occurred at the same time.

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<p>1 MR. JORDAN: Are the air quality control 2 issues, are those in place in an emergency like this or 3 just in normal times? 4 THE WITNESS: We're restricted -- each permit 5 in the facility is restricted to different lengths of 6 time. There are different requirements for each of the 7 diesel powered engines for back up or generators or 8 whatever it may be and -- 9 MR. JORDAN: Regardless of what is going on in 10 the ground? 11 THE WITNESS: It -- 12 MR. JORDAN: I mean, if all your other pumps 13 have failed -- 14 THE WITNESS: I would -- 15 MR. JORDAN: -- at your facility? 16 THE WITNESS: I would imagine that they may 17 offer some kind of variance to that, if you are 18 experiencing an emergency. They do -- well, for this 19 instance, we did run it for pretty good amount of time. 20 The permit is renewed annually. You must 21 maintain meter readings for hourly usage times. Charts 22 available for them to inspect. 23 I would assume -- I would only assume 24 that it would have to be regulatory -- for them to 25 understand there would be times of emergency.</p> <p style="text-align: right;">Page 534</p>	<p>1 DR. WOLF: And if you're not sure, you can 2 always -- 3 THE WITNESS: That may very well be. Speaking 4 from experience, knowing that from different wastewater 5 treatment plants, I have seen different durations of 6 time for different generators. 7 DR. WOLF: You -- 8 THE WITNESS: I'm not sure. It falls within 9 that, but that seems to be logical. 10 DR. WOLF: I think that is the industry saying. 11 Since you have been quite a bit involved 12 in helping the District in their compliance, both in 13 terms of permitting and help you bring from your 14 introduction, the best management practices to the 15 facility, have you had in your last four years of 16 experience, any observation, in terms of some 17 enhancements to prevent maintenance program that could 18 be performed, both mechanical and electrical, or 19 everything was satisfactory to your observation? 20 THE WITNESS: Preventative maintenance? 21 DR. WOLF: Yes. 22 THE WITNESS: We just recently updated the 23 operation for maintenance for the plant, which I 24 participated in in rewriting some of those portions of 25 the treatment plant processes. The District maintains</p> <p style="text-align: right;">Page 536</p>
<p>1 MR. JORDAN: Okay. Thank you. 2 THE WITNESS: Sure. 3 MR. YOUNG: Dr. Wolf? 4 DR. WOLF: I will kind of continue on this 5 question that was made about this particular pump. 6 isn't it true that this APCD does provide 7 provisions for testing standby generators and that the 8 provisions for a water treatment plant are the same for 9 health care facilities for legal report standby 10 systems? 11 THE WITNESS: As far as I know, this permit 12 does have an hourly usage on an annual basis, which you 13 can test and make sure that it starts, it operates and 14 is ready to go when it is called upon. 15 DR. WOLF: And isn't it true that the 16 calculation from APCD for the county are 30 minutes per 17 month of operation? 18 THE WITNESS: I believe that is the case with 19 this 30 minutes -- no, I don't think that is the case 20 with this permit. 21 DR. WOLF: But let me rephrase that. 22 The accumulative usage is six hours per 23 year. So you can -- that is your budget, so you can 24 run it one hour every two months, 30 minutes? 25 THE WITNESS: Um, that --</p> <p style="text-align: right;">Page 535</p>	<p>1 a hock (phonetic) plus system for preventative 2 maintenance. And it's very good system, in my opinion, 3 which both cards remind you via e-mail. And I did 4 write specifically about those portions about that, but 5 I was not involved in establishing that. It was 6 probably done by the chief operator out there. 7 DR. WOLF: And how long ago was this program 8 established? 9 THE WITNESS: They have been running that 10 program for several years now, as far as I know. The 11 manual was updated, I think, two years ago. 12 DR. WOLF: All right. So that was back in -- 13 around 2010? 14 THE WITNESS: I would say that is probably 15 right. 16 DR. WOLF: Okay. In the testimony done by the 17 electrical expert for the District this morning, 18 Mr. Thoma, Thoma Electric -- 19 THE WITNESS: Uh-huh. 20 DR. WOLF: -- there seems to be a contradiction 21 between his statement, that it was a miscoordination 22 problem with certain breakers, and we had a little 23 technical exchange on that topic. 24 THE WITNESS: I heard that. 25 MR. JORDAN: And you know, you mentioned that</p> <p style="text-align: right;">Page 537</p>

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<p>1 the shunt trip was the issue. Yet based on the 2 coordination study that was performed, the results had 3 indicated the fact that there were some miscoordination 4 between the breakers. Do you have any comment about 5 this?</p> <p>6 THE WITNESS: As far as I know -- as far as I 7 know, you're correct. There is still, I believe -- 8 there remain some issues with the coordination between 9 the breakers, particularly that of the upper 400 Amp 10 (phonetic). I can't remember.</p> <p>11 But what we have done, is this was 12 determined to be a shunt trip issue -- and I will come 13 back to the breaker -- and that was determined in 14 October of 2011 when a similar event happened, even 15 though we created that air gap that Mr. Thoma testified 16 about, and the water still migrated down and the hit 17 shunt tripped it, and they were able to institute the 18 emergency backup pump.</p> <p>19 And what we did there is we created 20 actually two shunt trips so to not actually cut off all 21 breakers and cut off two motors at a time. So if one 22 were to trip, you still have two motors. This does not 23 require four motors to run. Of course, the motors are 24 equipped to run independently.</p> <p>25 The breakers, yes, I did hear Mr. Thoma</p> <p style="text-align: right;">Page 538</p>	<p>1 THE WITNESS: Okay.</p> <p>2 DR. WOLF: And that it was a piece of equipment 3 that was purchased basically, that really was not 4 necessary, but you had the foresight -- that is the 5 term, I think that I was --</p> <p>6 THE WITNESS: The foresight.</p> <p>7 DR. WOLF: The foresight.</p> <p>8 THE WITNESS: Yes.</p> <p>9 DR. WOLF: Now, from your extensive experience, 10 isn't it correct that these types of backup pumps are 11 actually pretty common in the industry, considering 12 that the City of Pismo, your neighbor, had that same 13 identical piece of equipment?</p> <p>14 THE WITNESS: Well, it is a very good 15 statement, and to that, I would have to say the City of 16 Pismo did not provide us with the same piece of 17 equipment. The City of Pismo provided us with a backup 18 pump. But not necessarily a backup pump, which would 19 accommodate the headworks structure, and accommodate 20 those flows that which we experience and in that range.</p> <p>21 It -- the reason I said that the industry 22 has the foresight to purchase that is because I'm not 23 familiar with too many treatment plants that have that.</p> <p>24 Treatment plants do have auxiliary pumps 25 for various reasons. Pumping down, as I understand,</p> <p style="text-align: right;">Page 540</p>
<p>1 state that there were some issues. I heard him speak 2 out of my knowledge range, but it sounded like you 3 understood that there was some hard fuse issues, and I 4 thought he referred to you understanding the complexity 5 of trying to work out those issues.</p> <p>6 DR. WOLF: Okay.</p> <p>7 THE WITNESS: And I was not sure if it was 8 something that needed to be done, or if it was 9 something that was more difficult to do than necessary. 10 I was not sure from that conversation.</p> <p>11 DR. WOLF: When the District required the 12 diesel powered emergency pump, it was mentioned, I 13 think by you, that this was a -- I don't want to put 14 the words in your mouth -- but if I recall -- and it's 15 getting late, so you know, my brain cells are slowing 16 down a little bit -- but I think -- and perhaps, you 17 know, correct my interpretation, but you mentioned that 18 this was most like an unusual or a really -- what is 19 the term that was --</p> <p>20 THE WITNESS: Are you talking about the 21 flooding?</p> <p>22 DR. WOLF: Pardon me?</p> <p>23 THE WITNESS: The flooding?</p> <p>24 DR. WOLF: No. The diesel emergency bypass 25 pump.</p> <p style="text-align: right;">Page 539</p>	<p>1 clarifiers to elevated structures, the tanks, many 2 portions of the wastewater treatment plant are tanks 3 that can be drained out with wet pumps (phonetic). The 4 kind of drain that goes out with trap pumps that do all 5 those different operations. A backup pump is certainly 6 a good thing to have. It comes in handy.</p> <p>7 The reference I was making is that the 8 District had the foresight to purchase one that would 9 actually accommodate and replace the headworks 10 structure should it need to be replaced.</p> <p>11 DR. WOLF: Okay. Thank you. The last question 12 is, how many acres is the facility?</p> <p>13 THE WITNESS: The facility resides on 7.6 acres 14 or so.</p> <p>15 DR. WOLF: Okay. So 7.6, so we're looking at 16 about 19 acre feet of precipitation over your facility. 17 And kind of tying it a little bit back to the first 18 question that my colleague asked here, you gave a 19 hypothesis of the possibility that the headworks drain 20 would actually -- the overflow would be pumped back 21 into the plant.</p> <p>22 So if we consider 19 acre feet of 23 water -- surface water on the plant, plus the water 24 discharged from the sewage -- you know, I don't want to 25 us to go through the math tonight, but it doesn't --</p> <p style="text-align: right;">Page 541</p>

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<p>1 THE WITNESS: I'm more of a cubic feet person 2 or gallon person. 3 DR. WOLF: Well, I can do it in cubic feet, 4 too. That is not a problem. 5 THE WITNESS: To that I guess I would say that 6 there are sumps. As far as I know, it is sized to 7 accommodate the precipitation levels. It is not sized 8 to accommodate inflow from various water structures. 9 You do also have to remember this is a wastewater 10 treatment facility. 11 A good portion of that 7.6 acres is 12 comprised of large diameter tanks. Those tanks are 13 intended to treat that facility -- to treat that water. 14 Some of it is this large. Slow moving water that is 15 designed to settle out the solids. Transfer them to 16 the solid digestion location to treat the actual plant 17 water. 18 So some of that would be fine within the 19 treatment system already. What that is, these are 20 large 70-diameter tanks, 40-diameter tanks. 21 DR. WOLF: Correct. But those tanks -- those 22 tanks were not empty? 23 THE WITNESS: They were not. 24 DR. WOLF: They were not empty? 25 THE WITNESS: No.</p> <p style="text-align: right;">Page 542</p>	<p>1 District that it was about 38,000 gallons of water and 2 that is how much was backing up. And I know I'm 3 talking gallons earlier and I was talking acre feet, 4 but -- and I don't want to belabor this because I know 5 it's getting late -- but it seems that there is -- that 6 we're looking at very large inconsistencies, and 7 quantities, and I recognize it's not an exact science, 8 but -- 9 THE WITNESS: Well, I guess, understanding the 10 seriousness of your inconsistencies, perhaps if you can 11 elaborate. Where are those inconsistencies? 12 DR. WOLF: The inconsistencies, in terms of the 13 assumption that all the drain water is basically 14 recycled back in the plant -- 15 THE WITNESS: Oh, sure. 16 DR. WOLF: -- and also, there does not seem to 17 be an easy way of calculating how much sewage water was 18 coming out of the headwork. 19 THE WITNESS: Oh, out of headwork. I 20 apologize. I didn't understand that you were talking 21 about the 19th. I thought you were talking about the 22 site and the ability to handle water. 23 A couple comments there. We -- if you 24 can pull back up the map so I can show you. There are 25 several manholes on-site. We discharged from one of</p> <p style="text-align: right;">Page 544</p>
<p>1 DR. WOLF: You know when the event occurred, so 2 you can't -- you cannot make the assumption that these 3 tanks were able to capture, you know, this volume of 4 water? 5 THE WITNESS: Sure. Sure. I guess -- I never 6 performed an analysis of the drainage system on-site. 7 I do know that it's there. It works. There's never 8 been a flooding issue on-site, so it accommodates the 9 rain. How it does that, I'm not quite sure. It did 10 not accommodate this incident. 11 DR. WOLF: So you will agree that there is a 12 question mark? 13 THE WITNESS: Well, I have never seen proof in 14 the past that shows me that we flood frequently and 15 flooded to the point that we can't accommodate. 16 I've never seen or heard of the pumps 17 being overrun and not accommodating. So this isn't 18 just a gravity system. So you may be landing water on 19 the ground and putting it in a pumping system which is 20 pumping upwards, a combined pumping close to an MGD in 21 the treatment works. 22 DR. WOLF: Yeah, so -- 23 THE WITNESS: That could process a lot of 24 water. 25 DR. WOLF: I guess it was a statement from the</p> <p style="text-align: right;">Page 543</p>	<p>1 the manholes, which we know put off-site, because the 2 site does not have water on it typically. So that 3 water came on-site. 4 We spilled from a manhole. That manhole 5 commingled with water -- if you can refer to the 6 picture here. 7 This is not addressing your headworks, 8 but we can get there in a second. This is -- this blue 9 water represents the Oceano Lagoon water, and it was 10 probably at a further extent than this. We drew a 11 pictorial for you to help your understanding of what 12 happened. The water came this way on the site, and it 13 encroached on to the site. At that particular 14 topographical grade line, in which we know water 15 rose -- 16 THE REPORTER: Excuse me, could you slow down? 17 THE WITNESS: -- we did discharge from this 18 manhole right here. And that entire time we were 19 discharging, that water was there, we were spilling 20 into this part, which is interconnected with the Meadow 21 Creek. 22 And what we did in this particular 23 instance, is we needed to evaluate this from a 24 hydraulic study. We spilled in. We carried this dirty 25 water that now becomes sewage. Now, the analysis that</p> <p style="text-align: right;">Page 545</p>

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<p>1 we did here, is that we said that water at one time was 2 not there.</p> <p>3 It encroached up the site over a great 4 ridge on the edge of the property and the elevation 5 break. It encroached on the site, hung out on the site 6 for a while, and then the floodwaters eventually 7 receded. And when that water receded, if you have a 8 wall, for instance, and that water goes above that wall 9 line and it's on a slope, that water, the last inch or 10 so is going to skim off-site and the rest is going to 11 stay on-site, and it will be collected.</p> <p>12 So what we did is we did a sewer 13 assessment of that wastewater that came out of here. 14 Analyzed across this dimensional water space, and 15 skimmed off that top surface, which would typically be 16 the elevation of the known elevation.</p> <p>17 The county determines a 12-foot water 18 elevation, minus that grade break elevation. So that 19 is the water that went away --</p> <p>20 THE REPORTER: Excuse me --</p> <p>21 THE WITNESS: -- and that is what we report -- 22 the one that contradicts the statement that was made by 23 the State in their rebuttal saying that we did not 24 account for on-site storm water.</p> <p>25 So that is how we accounted for the</p> <p style="text-align: right;">Page 546</p>	<p>1 fighters here. There's grass right here. And this is 2 a -- I'm sorry, this is a dirt portion of the -- this 3 is a section that has sumps.</p> <p>4 But this is all asphalt leading to an 5 entire asphalt section back in here. These are the -- 6 this is all asphalt here. So I would guess -- I mean, 7 taking away the facility, you're maybe looking at 45 8 percent, maybe.</p> <p>9 DR. WOLF: Okay. So about -- your infiltration 10 covers about 50 percent of the facility, more or less?</p> <p>11 THE WITNESS: Well, keep in mind, this was a 12 significant rain event. The conditions were highly 13 saturated. Those were the elevated flows we saw in the 14 sewer system. So I don't -- I wouldn't consider the 15 infiltration rate occurring at this event. I would 16 consider run off probably back on to that, that 17 structure itself. In my opinion, in my professional 18 opinion.</p> <p>19 DR. WOLF: Thank you very much. I have used 20 enough of your patience --</p> <p>21 THE WITNESS: Sure.</p> <p>22 DR. WOLF: -- and your time.</p> <p>23 THE REPORTER: Excuse me, could we take a 24 break, please? It's been two hours.</p> <p>25 MR. YOUNG: Sure.</p> <p style="text-align: right;">Page 548</p>
<p>1 floodwater collecting the wastewater on-site, and the 2 fact that it did recede. We obviously knew, taking a 3 fair stab at this, and trying to do what is right, that 4 water came on and it commingled. And there has to be 5 some kind of account for that.</p> <p>6 The practice was that it came up, 7 breached a grade break, eventually settled back down 8 again on the normal water level. It's going to hit 9 that pitch point where it can't go one way or the 10 other, and half of it stays and half of it leaves.</p> <p>11 Where that break is and the elevation is, that skim off 12 of water is considered to be sewage water.</p> <p>13 DR. WOLF: Thank you.</p> <p>14 How much nonpermeable surface do you have 15 out of the seven-and-a-half acres?</p> <p>16 THE WITNESS: Nonpermeable?</p> <p>17 DR. WOLF: Yes.</p> <p>18 THE WITNESS: I don't know if we have a good 19 exhibit that will show that. I can do my best at 20 trying to -- I don't have a quantity for you, but 21 essentially this structure here, if you follow this red 22 line, this is all roadway that comes over here. This 23 is all asphalt.</p> <p>24 What I'm going to do now is draw in the 25 areas of grass. There's grass between these fire</p> <p style="text-align: right;">Page 547</p>	<p>1 (Break taken.)</p> <p>2 MR. YOUNG: All right. So where were we?</p> <p>3 MR. HARRIS: Me.</p> <p>4 MR. YOUNG: Okay. Mr. Harris.</p> <p>5 THE WITNESS: If I could, for the record real 6 quickly -- I'm sorry to interject here. I'd like to 7 make a clarification on a question asked of me just 8 moments ago regarding the financial funds for the 9 budget.</p> <p>10 I stated before that fund 20 primarily 11 came from rate and hook ups respectively. I would like 12 to conclude that those do come from rates and 13 interest -- hook ups and interest only. So it's a 14 clarification I made by speaking with the Board of 15 Director. I just wanted to clarify that.</p> <p>16 MR. YOUNG: Okay. Mr. Harris.</p> <p>17 MR. HARRIS: My first question -- the 18 District's great expense and trouble hiring RMC to do 19 an analysis of the State's estimates of how much was 20 spilled and to offer an alternative.</p> <p>21 And -- so I assume that the District felt 22 pretty comfortable with RMC with their ability to 23 predict the size of the spill. But the District's 24 estimate differs substantially from what RMC came up 25 with. Can you answer why the District did not adopt or</p> <p style="text-align: right;">Page 549</p>

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<p>1 use RMC's estimate?</p> <p>2 THE WITNESS: Well, that is a very good</p> <p>3 question. Getting back to some testimony earlier about</p> <p>4 myself, the District initially did a five-day report.</p> <p>5 And in that five-day report, we considered three</p> <p>6 different storm methodologies. We considered the</p> <p>7 duration of the flow, as well as the pump curve</p> <p>8 methodology, as well as that of Mr. Appleton.</p> <p>9 We submitted all three reports for</p> <p>10 review. We indicated that we thought the most</p> <p>11 defensible, and the one that fit most in their</p> <p>12 reporting requirements, which we testified to before,</p> <p>13 was the duration and flow method.</p> <p>14 But we did do a flow-curve analysis. We</p> <p>15 performed that on our own. We basically took a look at</p> <p>16 the flow. We spoke with the operators. We asked for</p> <p>17 storms that were most significant or related to the</p> <p>18 December 19th event.</p> <p>19 They provided two storms in general. One</p> <p>20 being in January 2006, I believe. And we took a look</p> <p>21 at the rain events and the flows that were</p> <p>22 responsible -- the flow that occurred as responsive,</p> <p>23 and we created our own hygrograph, and we kind of</p> <p>24 tweaked at it and tweaked at it. And we did an</p> <p>25 analysis where we kind of extended it and made it match</p> <p style="text-align: right;">Page 550</p>	<p>1 This methodology, while it was a great</p> <p>2 number in the end, it matches what we feel -- well,</p> <p>3 matches RMC almost exactly. It matches corrections,</p> <p>4 which we try to apply to the State's methodology</p> <p>5 through prior meetings and 674 (phonetic) after we</p> <p>6 corrected some issues we had with theirs. And we were</p> <p>7 very happy with that. We were very pleased it ended up</p> <p>8 that way. We submitted it all.</p> <p>9 But in the end, as I mentioned, there is</p> <p>10 a CIWQS requirement that is part of the current NRP</p> <p>11 that requires you report allocation. It requires that</p> <p>12 you report manhole-by-manhole basis. This only</p> <p>13 indicates what is happening at the headworks.</p> <p>14 This is not the spill that occurred. It</p> <p>15 occurred in the entire community. We don't know how to</p> <p>16 distribute that volume right there, around manholes,</p> <p>17 around many locations. Do we do it equally? So we</p> <p>18 went with something that was the most defensible. That</p> <p>19 was with speaking with the community. That was</p> <p>20 receiving photographs. That was applying engineering</p> <p>21 analysis that we could rely on. And for that reason we</p> <p>22 submitted that report.</p> <p>23 However, we held back nothing. We</p> <p>24 submitted all of our evidence to them. All of our --</p> <p>25 we submitted binders, probably four binders. We felt</p> <p style="text-align: right;">Page 552</p>
<p>1 where we thought it should match.</p> <p>2 And based upon the flow that occurred at</p> <p>3 the time of the failure, the flow data that we received</p> <p>4 in the two significant rain events, and we ended up</p> <p>5 with a value of 600 and -- let's see, which one is</p> <p>6 ours?</p> <p>7 MS. THORME: The bottom.</p> <p>8 THE WITNESS: The bottom one. So this is</p> <p>9 January 5th, 2011, five-day report to the State Water</p> <p>10 Board. We calculated 654,000 gallons --</p> <p>11 MS. THORME: And that is Exhibit 9.</p> <p>12 THE WITNESS: This is compared to the RMC</p> <p>13 value, which are, in my mind, the true experts. They</p> <p>14 have the modeling expertise, the knowledge. We came up</p> <p>15 within 20,000 gallons of their final number.</p> <p>16 Now, the reason we didn't go with this</p> <p>17 number, as I mentioned, we just couldn't justify it.</p> <p>18 And you have to think back. This is not the current</p> <p>19 day. This is not under the spotlight of the Water</p> <p>20 Board.</p> <p>21 We did a ton of information. We gathered</p> <p>22 a ton of information and did a ton of work and did our</p> <p>23 due diligence as professionals to try to acquire what</p> <p>24 we felt to be the best fit and most appropriate</p> <p>25 methodology, and the most defensible methodology.</p> <p style="text-align: right;">Page 551</p>	<p>1 like we overwhelmed them, and we asked if we could come</p> <p>2 up to Sacramento and visit with them. We said, we gave</p> <p>3 you so much. We want to make sure you understand it.</p> <p>4 We want to sit down at the table with you and go over</p> <p>5 this and see what you think. And we had three or four</p> <p>6 meetings up there, at least, talking about methodology.</p> <p>7 So you know, again, it was a level of</p> <p>8 transparency. But maybe at the end of the day, we're</p> <p>9 engineers, we have to be able to stand behind what we</p> <p>10 do and make our judgments in the best interest of our</p> <p>11 pursuit. So we went with number one, methodology.</p> <p>12 MR. HARRIS: Okay. The October 2011 event, the</p> <p>13 shunt trip, you mentioned that the wiring, prior to</p> <p>14 that, had been rerouted to a wall and a new conduit to</p> <p>15 provide an air gap, but you still had problems on</p> <p>16 October 2011. What was that caused by?</p> <p>17 THE WITNESS: That's correct. What happened</p> <p>18 there was an attempt to fix what we thought was -- if</p> <p>19 you remember my testimony -- when this first happened,</p> <p>20 the water, we knew had migrated into the conduits. It</p> <p>21 traveled down to the pumps. It shorted the number 4</p> <p>22 pump, and we found the interior portion of the motor</p> <p>23 moist upon inspection.</p> <p>24 We pulled them all out. We sent them to</p> <p>25 a repair shop. We had them coated. I believe some of</p> <p style="text-align: right;">Page 553</p>

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<p>1 the bearings got replaced. We put the pump back in 2 place. We thought it was a pump issue. We thought 3 that we could inject that water right in the heart of 4 the pump. Low and behold, we injected it into the 5 shunt trip, that is what caused the primary breaker 6 issue that we had.</p> <p>7 So we thought by creating that air gap, 8 as Mr. Thoma testified to today, that that would 9 resolve the issue of the water migrating up in the 10 pumps. That was performed in August 2011.</p> <p>11 Then on October 4th of 2011, we had a 12 very similar incident where water migrated in, into 13 that pull box, traveling down the conduit. This time 14 it was not the conduits. The conduit was still in 15 place. The shunt trip, if you remember, was down in an 16 elevated structure. So it had passed through into 17 that. That is where we truly determined that it was 18 the shunt trip itself and not the motors.</p> <p>19 MR. HARRIS: Earlier, you showed an exhibit 20 that had some corrective actions listed on it. I don't 21 recall if it was a table that showed --</p> <p>22 MS. THORME: Exhibit 9?</p> <p>23 MR. HARRIS: -- and I'm wondering, were those 24 ones that you proposed to do or were they ones that you 25 had done in response to the events --</p> <p style="text-align: right;">Page 554</p>	<p>1 provided it. And I'm assuming it had not been 2 completed.</p> <p>3 Why didn't the District -- when that 4 request came in, why didn't the District provide the 5 most recent monthly report to Mr. Horner, because 6 clearly, it looks like you're producing a monthly 7 financial statement?</p> <p>8 THE WITNESS: That's a good question. I'm 9 trying to think back.</p> <p>10 We provided the 2008, 2009, 2010 11 financial statements, as well as the District budgets. 12 In my opinion, the District budgets are an accurate 13 representation. Mr. Horner testified to that today, 14 but --</p> <p>15 MR. HARRIS: That is not my question. The 16 question is, this is a monthly financial statement, 17 it's not a budget. So if he was asking for the most 18 recent information so he can do an accurate ability to 19 pay analysis --</p> <p>20 MS. THORME: Can I just jump in there, because 21 Mr. Horner never asked us for that and --</p> <p>22 MR. HARRIS: But you're not testifying, right?</p> <p>23 MS. THORME: I understand, but you're -- you 24 said that Mr. Horner had asked us for that, and that is 25 not a correct statement.</p> <p style="text-align: right;">Page 556</p>
<p>1 THE WITNESS: What we did -- you know our 2 efforts were multifaceted after the event. We were in 3 the midst of the spill. We were trying to figure out 4 what happened, where it happened, how it happened. Who 5 was effected. What we needed to do. And part of that 6 was the recovery process of what we needed to do to 7 make sure this doesn't happen again.</p> <p>8 So we created a number of issues. For 9 instance, we noted a high amount of I and I in the 10 system. So we hadn't in the past done an I and I 11 study. So we did that I and I study.</p> <p>12 We monitored for four weeks. We took a 13 look at the inflow of the system. The portion of this 14 rewiring over the -- over the wall. We did a breaker 15 study, that we spoke about --</p> <p>16 MR. HARRIS: I will just cut to the chase. So 17 of those that were suggested, how many of those were 18 completed?</p> <p>19 THE WITNESS: I believe all of them had been 20 completed.</p> <p>21 MR. HARRIS: Okay. The report that was 22 recently -- the monthly financial report that was 23 recently provided, Mr. Horner testified earlier in the 24 day that, I believe, had tried to get the 2012, 2011 25 annual financial report, and that the District had not</p> <p style="text-align: right;">Page 555</p>	<p>1 MR. HARRIS: No, I said he asked for the annual 2 financial report, right, the 2011 is what he had asked 3 for?</p> <p>4 MS. THORME: Right.</p> <p>5 MR. HARRIS: And it was not forthcoming. And I 6 assume that it was because it had not been completed.</p> <p>7 MS. THORME: Right.</p> <p>8 MR. HARRIS: Would it not have been to your 9 advantage and would it not have been the most 10 forthright thing to do is to say, Mr. Horner, but we do 11 have monthly financial statements that we do, and we 12 can provide you the most recent one, which would have 13 taken him up to date to whatever month that was.</p> <p>14 MS. THORME: Well, legally we received a 15 subpoena from the prosecution team. We responded to 16 the request that they had, and they asked for specific 17 things, including the actual term that he used, which 18 the District does not have because they don't have 19 documents by that term. So we produced documents in 20 response to the subpoena, which were produced on August 21 13th, and that document came after that date.</p> <p>22 MR. HARRIS: This document came after, but you 23 had one for June, May, April.</p> <p>24 MS. THORME: But they didn't request those 25 documents.</p> <p style="text-align: right;">Page 557</p>

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<p>1 MR. HARRIS: Okay. You had mentioned 2 earlier -- you had used the term earlier when we were 3 talking about what you do when floodwaters -- when it 4 was bypassed and over to the sludge pumps? 5 THE WITNESS: Yes. 6 MR. HARRIS: Based on your understanding of the 7 Federal regs (phonetic), what is the definition of 8 "bypass"? Does that action meet the definition of 9 bypass? 10 THE WITNESS: That was just bypassed on-site 11 for temporary storage. Bypass did not occur. It did 12 not bypass -- 13 MR. HARRIS: So it does not meet the definition 14 of Federal law as bypass as you -- 15 THE WITNESS: My understanding is that portion 16 of what I consider to be a bypass, did not bypass the 17 definition -- 18 MR. HARRIS: Okay. So it's a misuse of the 19 term? 20 THE WITNESS: Correct. 21 MR. HARRIS: Okay. Earlier you stated that you 22 did not believe that the precipitation that occurred on 23 or around the event was one-hundred-year flood; is that 24 correct? 25 THE WITNESS: That I did not believe that, yes.</p> <p style="text-align: right;">Page 558</p>	<p>1 of a hundred-year event? 2 THE WITNESS: I do not think the intensity that 3 I saw of that two-day period meets that, that event. 4 There was significant flooding, which would be 5 characteristics of a potential 85-year or 80-year 6 flood, 100-year flood. I don't know. 7 MR. HARRIS: Okay. So that would mean that you 8 did not meet that permit requirement then, in your NPDS 9 permit? 10 THE WITNESS: Not according to my knowledge of 11 the event. 12 MR. HARRIS: Okay. Thank you very much. 13 MS. MACEDO: I have -- I'm sorry to interrupt, 14 but just to respond to Ms. Thorne's interaction with 15 Mr. Harris, I just wanted to -- switch me to D, please. 16 She mentioned the subpoena, and since I'm 17 the one that issued it, I just wanted to point out 18 request number 13, which gave the District an 19 opportunity to provide any documentation that they 20 wanted the Board to consider, related to the District's 21 ability to pay. That's it. 22 MR. YOUNG: Did you ask for any monthly 23 financial statements? 24 MS. MACEDO: We asked for -- Mr. Horner reviews 25 comprehensive annual financial reports. They provided</p> <p style="text-align: right;">Page 560</p>
<p>1 MR. HARRIS: Correct. But the permit contains 2 language that says I believe that wastewater treatment 3 plant must be built, maintained to withstand a hundred 4 year, 24-hour event, correct? 5 MS. THORNE: No, that is not correct? 6 THE WITNESS: That's not correct. 7 MR. HARRIS: Will you correct me, please? 8 THE WITNESS: I believe it says 9 one-hundred-year storm. 10 MR. HARRIS: Okay. One-hundred-year storm, but 11 we determined this was not one-hundred-year storm? 12 THE WITNESS: Well, there's -- there's a number 13 of requirements to classify a one-hundred-year storm. 14 It's duration and time and quantity and volume. 15 MR. HARRIS: So do you think that this -- so 16 let's focus on the permits. So the permit has 17 requirements in there that you -- they must be built, 18 maintained to hold up to a one-hundred-year event 19 storm, whatever you want to call it. 20 Would you agree with that general 21 statement? We can go to the regs (phonetic) and look 22 at it, but -- 23 THE WITNESS: Sure. 24 MR. HARRIS: Okay. Do you think this storm was 25 of such a size or duration, that it met that threshold</p> <p style="text-align: right;">Page 559</p>	<p>1 three -- the previous three fiscal years of audit 2 financial reports, and then 13 was designed to be a 3 catch-all that they were given the opportunity to 4 provide anything else, because we knew that we had 5 public budgets. They had given us documents and 6 settlement discussions. 7 So 13 was designed to -- anything else 8 you want the Board or us to look at, because at this 9 point, the burden has shifted to them to prove it as an 10 affirmative defense. 11 MR. YOUNG: Okay. 12 MS. MACEDO: Sorry to interrupt. 13 MR. YOUNG: Mr. Yonker, you had testified that 14 no customers of the District submitted any claims; is 15 that correct? 16 THE WITNESS: That's correct. 17 MR. YOUNG: Did the District inform its 18 customers that they could file claims? 19 THE WITNESS: Not that I'm aware of. 20 MR. YOUNG: Do you know if the District 21 informed or offered to pay for any damage within their 22 customers' homes or property that may have been 23 affected by the spill? 24 THE WITNESS: I do not think we did. I know 25 this was a significant wet-day storm, as opposed to a</p> <p style="text-align: right;">Page 561</p>

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<p>1 standard-dry day, you know, somewhat different in the 2 past. The significant impact that I saw was quite a 3 bit of flood damage.</p> <p>4 MR. YOUNG: My question is, did the District 5 offer to compensate or reimburse any of its customers 6 who may have been affected by the spill within their 7 homes or property?</p> <p>8 THE WITNESS: I do not believe so.</p> <p>9 MR. YOUNG: Okay. Mr. Jeffries?</p> <p>10 MR. JEFFRIES: Let me ask you the question a 11 little bit differently than Mr. Young did.</p> <p>12 Were there any insurance companies on 13 behalf of their clients, ask for payment for 14 reimbursement?</p> <p>15 THE WITNESS: No.</p> <p>16 MR. JEFFRIES: That you know of?</p> <p>17 THE WITNESS: None that I know of.</p> <p>18 MR. JEFFRIES: Okay. I'm a little concerned 19 about the restricted funds, because I serve as a chair 20 of a special district, and we have restricted funds. 21 We show that on a different line, so it shows 22 restricted funds. And we do not commingle our funds in 23 LAIF accounts or any other type of accounts. But I 24 noticed in this particular financial statement, which I 25 think should have been submitted earlier today instead</p> <p style="text-align: right;">Page 562</p>	<p>1 MR. JEFFRIES: The bottom of the page.</p> <p>2 MR. YOUNG: On the bottom of page one.</p> <p>3 MR. JEFFRIES: And it ends up on the back side 4 of page one. And it says, "because its contracted 5 payroll services, funds are transferred periodically to 6 the LAIF, in order to cover these expenses."</p> <p>7 THE WITNESS: Well, my answer to that would be 8 that funds 20 is a protected fund, potentially funds --</p> <p>9 THE REPORTER: I'm sorry, but could you please 10 speak louder and slow down? You are trailing off at 11 the end.</p> <p>12 MS. JAHR: Could you just restate that for us?</p> <p>13 THE WITNESS: Oh, sure.</p> <p>14 Fund 20 is a statement that I made saying 15 it's protective fund. As far as I know, fund 20 can't 16 be touched, so it is possible that is a fund 19 17 transfer. I'm not sure.</p> <p>18 MR. JEFFRIES: Well, then how would you know 19 when you're transferring funds, you're not transferring 20 funds that are restricted when they are commingled?</p> <p>21 THE WITNESS: That is a very good question. We 22 do have an ability to pay slides that we prepared, 23 which we talked about. The legalities are restricted 24 funds, if you would like to say that.</p> <p>25 MR. JEFFRIES: No. I think you've pretty well</p> <p style="text-align: right;">Page 564</p>
<p>1 waiting till late tonight -- it's poor judgment on your 2 representatives to do that. Not only that, but if you 3 add up the cash of life across, it's off by a dollar.</p> <p>4 It should read \$3,400,505, instead of 504 5 dollars. What's a dollar when you're talking about 6 millions.</p> <p>7 But I'm assuming that that \$3,400,504, as 8 you show, is restricted funds and cash flow, as well? 9 Is that -- I know you're not an accountant, but do 10 you --</p> <p>11 THE WITNESS: Well, I'm not an attorney, and I 12 don't claim to be. To the best of my knowledge, this 13 fund cannot be touched. It must be utilized for the 14 purposes for which it is collected.</p> <p>15 MR. JEFFRIES: Okay. And then it goes back 16 here, it says life transfers. It says here on Rabobank 17 funds as of July 31st, a reconciled cash balance of 18 Rabobank, a total of \$23,587.</p> <p>19 This is an account that processes LAIF 20 transfers for the issuance of payroll checks through 21 the District. Now, if that is the case that those are 22 all restricted funds, why are you using them for 23 payroll?</p> <p>24 THE WITNESS: Well, I'm going to have to catch 25 up with where you are. Could you point that out to me?</p> <p style="text-align: right;">Page 563</p>	<p>1 answered my question, and I know you're not an 2 accountant so -- but I just wanted to point that out 3 that it might be better if you had it separated. It 4 would be easier to understand.</p> <p>5 My next question is, the information the 6 RMC used to come up with the calculations of the amount 7 of the spill, most of those numbers were submitted by 8 your agency; is that right?</p> <p>9 THE WITNESS: I would not say most of them, but 10 I would say a portion of them, yes.</p> <p>11 MR. JEFFRIES: Okay. And is that why you think 12 that your calculations and their calculations were 13 pretty close to the same, because you supplied some of 14 your numbers to them?</p> <p>15 THE WITNESS: No. We can pull up a sheet that 16 shows where the calculations came from and where they 17 were performed by a professional stamped engineer as 18 the RMC expert testified, he did not fully review them, 19 but he did give them --</p> <p>20 MR. JEFFRIES: Yeah, his testimony said he did 21 not go back and review all of the numbers because he 22 received them from the agency.</p> <p>23 THE WITNESS: We gave him a cursory review, and 24 they were performed by a professional and felt they 25 were appropriate.</p> <p style="text-align: right;">Page 565</p>

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<p>1 MR. JEFFRIES: Now, you didn't have anybody 2 that just took it as -- to audit yours or RMC's analogy 3 and didn't receive any calculated numbers from your 4 agency to calculate the spill? 5 THE WITNESS: I'm sorry, but can you repeat 6 that question? 7 MR. JEFFRIES: Well, what I'm trying to get at 8 is, I just asked you that RMC reused some of your 9 numbers that you supplied? 10 THE WITNESS: Uh-huh. 11 MR. JEFFRIES: And you said you had documents 12 that showed that, but was there any review of those 13 calculations by another independent company that 14 started from scratch? 15 THE WITNESS: There was not. The reason that 16 there needs to be -- 17 MR. JEFFRIES: That's fine. You answered my 18 question. 19 THE WITNESS: Okay. 20 MR. JEFFRIES: The next question I have is that 21 photograph that showed some flooding that was taken by 22 the T.V. station -- 23 THE WITNESS: Yes. 24 MR. JEFFRIES: -- and you said that it -- and 25 you showed another slide. The one slide by the</p> <p style="text-align: right;">Page 566</p>	<p>1 MR. JEFFRIES: Was there any investigation? 2 THE WITNESS: Yes. 3 MR. JEFFRIES: Okay. And can you explain what 4 you found? 5 THE WITNESS: I can explain the investigation. 6 I can explain the investigation from our end, and I can 7 explain the lack of the investigation from the State's 8 end. 9 When the State contests hearsay, that the 10 homeowner states it was bubbling, the State was there 11 to speak to the homeowner, but yet never took pictures 12 to show where it actually existed relative to the 13 picture. 14 My picture shows a driveway in the 15 picture. I have a picture showing the dry weather and 16 wet weather and where that location is, as well as 17 where it isn't in the bubbling and the lack of bubbling 18 in the water. 19 I also -- I'm pretty familiar with that 20 system. That is a satellite collections system. And 21 if you are familiar with sewer systems -- I'm sorry if 22 you are. I don't mean to belabor the point. 23 But sewer systems run in segments, 24 typically 300 feet before there is a manhole for access 25 purposes. At the turn of that collection system, there</p> <p style="text-align: right;">Page 568</p>
<p>1 television station showed some bubbling coming up, and 2 it was stated by the prosecution team that that was 3 from the clean-out location? 4 THE WITNESS: That's correct. 5 MR. JEFFRIES: Your testimony, if I understood 6 you correctly, said by showing another photograph, that 7 that location was not the same. It was a different 8 location? 9 THE WITNESS: That's correct. 10 MR. JEFFRIES: Okay. 11 THE WITNESS: It's the same location, but they 12 misplaced where the actual clean-out was. 13 MR. JEFFRIES: Well, if I remember correctly, 14 looking at those two photographs, yours was shown 15 several feet away from where the photograph showed the 16 bubbling. 17 THE WITNESS: It was about 20 feet away. 18 MR. JEFFRIES: Okay. So how do you attribute 19 the bubbling coming up in that particular location, 20 than the location where you pointed it out? 21 THE WITNESS: I don't -- 22 MR. JEFFRIES: Is there another -- is there 23 another clean-out there, or is there another manhole? 24 THE WITNESS: There is no other clean-out. 25 There is no other manhole. That is --</p> <p style="text-align: right;">Page 567</p>	<p>1 is not a manhole. There simply is a clean-out. That 2 clean-out is nothing more than a pipe that goes to a 45 3 and entered out to a clean-out. 4 That clean-out is a four-inch structure 5 that was referenced in their calculation that was 6 underestimated, that allows the municipal crews to get 7 in there and clean that line because -- 8 MR. JEFFRIES: All right. To clean it out. 9 THE WITNESS: So in this particular instance -- 10 if you can zoom in there on that picture on the bottom. 11 Okay. At the end of that arrow -- is it 12 possible to get it any bigger? 13 Okay. At the very end of that arrow, 14 spray painted green, is that clean-out. That clean-out 15 spray painted green by the satellite operations 16 facility, we coordinated with them to go down after the 17 spill and locate all of their clean-outs and the 18 facilities. 19 Some of those clean-outs were buried 20 under the grass and debris, and so we actually had to 21 have them locate them and spray paint them green. So 22 that facility was actually located by their operation's 23 department and spray painted green and clearly 24 identified. 25 The picture that you see presented by the</p> <p style="text-align: right;">Page 569</p>

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<p>1 State, which I'm sure we can pull up, is actually more 2 in line with that RV on the right and much closer to 3 the windshield. There are no facilities down there. 4 There are no homes down there. This is the last home 5 here. So this home has to connect upstream into the 6 picture from where we are. If it doesn't, it can't 7 affect that line, and therefore cannot travel to the 8 treatment plant. 9 And if you look at that picture there on 10 the very back right -- what I'm seeing is a wind sheer 11 coming up from the RV. So in the very back, you have a 12 marsh back there. It's open ocean, and you can see the 13 surface disturbance in the linear fashion in the back 14 of the picture. That is the wind going across there. 15 You can see it better in the video that I witnessed, 16 but that is the wind sheer. 17 It's my opinion, that possibly that wind 18 sheer is coming down the side of that 20-by-10 foot 19 trailer, or something along those lines. The actual 20 location of the clean-out is much closer to that saw 21 horse that you see in the middle. It is to the right. 22 There is a grass berm where the road begins and the 23 clean-out is down there. 24 MR. JEFFRIES: So your theory -- 25 THE WITNESS: Right by --</p> <p style="text-align: right;">Page 570</p>	<p>1 MR. JEFFRIES: -- and you have no technical 2 data to back that up? 3 THE WITNESS: The technical data would be my 4 field visits down there to verify it was nothing. We 5 also have -- just to follow through -- we have the -- 6 we have surveyed grade geographical information system 7 from our collection systems. 8 That means we have it spacially and 9 data-wise that we can position them spatially across 10 the aerial map relative to the facility on the grounds, 11 so we know in terms of inverts so we know exactly where 12 they are. This collection system is tied into that 13 map, and we know where it exists. There is no facility 14 down there that I'm aware of. 15 MR. JEFFRIES: You stated that -- and I think 16 others from your group have stated -- that they never 17 had an event like this at that facility; is that 18 correct? 19 THE WITNESS: That's correct. 20 MR. JEFFRIES: And have you done any 21 background, as far as the miracle of 1997 floods that 22 we had in this area, where we had cars floating down 23 Higuera Street? The creek along 101 down the Pismo 24 Beach was overflowing onto the 101. 25 THE WITNESS: The background I have done has</p> <p style="text-align: right;">Page 572</p>
<p>1 MR. JEFFRIES: -- is that little disturbance in 2 that right-hand corner of that photo, is wind sheer off 3 of that motorhome that is sitting there? 4 THE WITNESS: I don't see that as being a 5 strong argument being made by the State. There is no 6 photograph of a dry condition. They're down there 7 speaking to the residents. You would think they would 8 have the resident pointing to it and the photograph 9 saying -- I'm sorry -- 10 MR. JEFFRIES: Why would he be wading out there 11 in that water with sewage bubbling out? 12 THE WITNESS: The State went down and spoke 13 with these residents just last week in prior weeks -- 14 in August trying to get additional information about 15 the spills. Spoke to this particular incident -- 16 individual. His evidence was submitted as hearsay. It 17 was recognized as hearsay. 18 And it lacks the photographic evidence, 19 in my opinion, to support that as a spill. I do not 20 see that as a spill. It is not any kind of spill I 21 have seen in the past. It is a surface disturbance, 22 but certainly not caused -- 23 MR. JEFFRIES: So your theory is strictly it's 24 a wind sheer -- 25 THE WITNESS: I would --</p> <p style="text-align: right;">Page 571</p>	<p>1 been community outreach through the county's program 2 where we attended a flood meeting. And the intent of 3 the flooding meeting was to educate the people on the 4 event. How it happened. Why it happened, and what 5 they are going to do. That they have a series of 6 events they are looking to put in place so make sure 7 this doesn't happen again. 8 And at that time, I did hear stories like 9 that. But I also heard stories, at that time, there 10 has never been an issue. We have heard testimony from 11 the public comments today that there have been storms 12 that have been severe without flooding, and that is 13 because the flap gates were operating or because people 14 manually manipulated the flap gates. 15 MR. JEFFRIES: But part of your testimony is 16 it's an act of God and that is the reason we had the 17 flooding and that is the reason the plant failed. That 18 was part of your testimony that you gave; is that 19 correct? 20 THE WITNESS: That was correct, in terms of the 21 penalty factor that was presented by the State in my 22 dispute to that. 23 MR. JEFFRIES: You were not present the day of 24 the 19th of December; is that correct? 25 THE WITNESS: I was not on-site, no.</p> <p style="text-align: right;">Page 573</p>

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<p>1 MR. JEFFRIES: And what day did you get 2 on-site? 3 THE WITNESS: I got on-site in the following 4 few days. Perhaps on the -- let's see, Sunday would 5 have been the 19th. So perhaps by Tuesday or Wednesday 6 of that week. 7 MR. JEFFRIES: Well, since you're the most 8 responsible engineer for that particular plant, 9 wouldn't you think it would be important for you to be 10 there? 11 THE WITNESS: I'm most knowledgeable. I was -- 12 I was at home that day with my family. I received a 13 phone call about 7:00. I was informed of the events. 14 I was asked to provide information on the collection 15 system because the operator wanted to get out and 16 provide information. 17 I'm knowledgeable about the systems and I 18 knew where the manholes were and where it was spilling 19 from at the time. So they went out -- as I understand 20 it, they were intending to go out and try to post the 21 locations. 22 So I missed the flood event. That is 23 true. I have gathered more information than I ever 24 have wanted to gather and studied it. I have reviewed 25 lots of it. And so I have not touched it, but I have</p> <p style="text-align: right;">Page 574</p>	<p>1 We wanted to do this right. We wanted to be fair. And 2 we disagreed with the penalty of volume that came up 3 with the State that came up where the overall fine is 4 associated with that. 5 And we wanted to do a third party 6 analysis, because we wanted this to be fair and 7 correct. We hired two independent third party mutually 8 exclusive engineer professionals, both very, very 9 reputable, and we assigned them the task that we 10 assigned them to take a look at, so there was no 11 reason. 12 MR. HARRIS: So RMC was one of them, right? 13 THE WITNESS: RMC, yes. 14 MR. HARRIS: Thank you. 15 MR. YOUNG: Mr. Johnston? 16 MR. JOHNSTON: Yes, just a couple of quick 17 questions. 18 I'm still trying to get my head around 19 the different ability to pay arguments made by the 20 District and the prosecution team. 21 You testified that fund 20 cannot legally 22 be used for any purpose other than plant expansion; is 23 that correct? 24 THE WITNESS: As I understand it, it can't be 25 used for any purpose other than the purposes that it is</p> <p style="text-align: right;">Page 576</p>
<p>1 seen it. 2 MR. JEFFRIES: Well, I asked a question -- I 3 know that -- I can't remember the gentleman's name, but 4 he was an electrical contractor, said they reengineered 5 the conduits, so they have an air gap; is that correct? 6 THE WITNESS: The air gap that I believe you're 7 referring to is the conduits that run over the headwork 8 structural wall. I can show you the exhibit and where 9 it's actually -- 10 MR. JEFFRIES: No, my question is, are those 11 now sealed? 12 THE WITNESS: Yes. 13 MR. JEFFRIES: Okay. Thank you. 14 MR. YOUNG: Mr. Harris, then Mr. Johnston. 15 MR. HARRIS: Can you tell me why the District, 16 when they hired CH2M Hill, did not have the RMC 17 methodology peer review linked to the State's, as they 18 did yours? 19 THE WITNESS: I'm sorry, when we hired CHM2 20 Hill, they did not have the RMC -- 21 MR. HARRIS: No, why they did not look at the 22 RMC methodology for calculating the spill volume? 23 THE WITNESS: We hired two third parties. It 24 was not a cheap thing for us to do. It was a very 25 extensive process. It was part of our due diligence.</p> <p style="text-align: right;">Page 575</p>	<p>1 collected for. 2 MR. JOHNSTON: Can it be -- can the District 3 borrow against it for other purposes? In other words, 4 can they loan money to themselves for operating 5 expenses or other purposes out of that fund? 6 THE WITNESS: I -- let's see. Loan -- so 7 borrow against it for what purposes? 8 MR. JOHNSTON: For -- let's say for general 9 unrestricted operating purposes, whether it would be 10 paying payroll, paying a fine, whatever it is, 11 nonexpansion purposes? 12 THE WITNESS: I would say no. 13 MR. JOHNSTON: Okay. I'm looking at the 14 exhibit you guys gave us, the financial report for 15 August 15th, 2012. And I'm looking at the balance 16 sheet portion of it, the last page, and if you look 17 cross the top at the cash balance, it shows that the 18 operating fund has a \$698,000 negative cash balance. 19 The fund 26 replacement fund, has \$286,000 positive 20 balance. And the fund 20 expansion has a \$4,300,000 -- 21 I'm rounding -- positive balance. 22 It looks to me, looking at this, as 23 though the only way you can have an almost \$700,000 24 cash negative cash balance in the operating fund, is if 25 you're borrowing from one of the other funds.</p> <p style="text-align: right;">Page 577</p>

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<p>1 And I -- and there is not enough money in 2 the replacement fund to borrow from. There's only 3 \$286,000. You can't borrow \$700,000 from \$286,000. 4 So it looks to me like the District is 5 borrowing that \$700,000 deficit in the operating fund 6 from the expansion fund. 7 Can you give me an alternate explanation? 8 THE WITNESS: I don't have an answer for that. 9 MR. JOHNSTON: Okay. The second question is, 10 there was testimony that the rates -- the current rates 11 were \$16 approximately? 12 THE WITNESS: Yes. I do remember that, yes. 13 MR. JOHNSTON: And is that approximately, 14 correct? 15 THE WITNESS: It looks like it's about \$14.83 16 or something. 17 MR. JOHNSTON: Okay. And can you just explain 18 a little bit about the rates structure to me? If I'm 19 in Oceano, do I pay a sewage fee to Oceano, and also to 20 the South San Luis Obispo County District, or do I pay 21 a sewage fee to Oceano that pays a portion to the South 22 County District? 23 THE WITNESS: Pretty much the former. They do 24 it each their own way. But they collect wholly for 25 both services from the residents of those communities,</p> <p style="text-align: right;">Page 578</p>	<p>1 what is its fiscal year? 2 THE WITNESS: The fiscal year begins in July. 3 MR. YOUNG: July. July 1st? 4 THE WITNESS: Yes. 5 MR. YOUNG: Okay. Do you know at the end of 6 June, what the balance was in fund 19? 7 THE WITNESS: I do not know that. 8 MR. YOUNG: The statement prior to this one, do 9 you know if it had a negative balance? 10 THE WITNESS: That fund, I believe has been 11 negative. When I look at the recent bar chart that I 12 reviewed, I believe -- I see this where it was just 13 starting to come out of the negative. So yes, I would 14 believe June is probably negative from my recollection. 15 MR. YOUNG: And was money being transferred out 16 of that operating fund from the expansion fund? 17 THE WITNESS: I don't think that is the case. 18 I know at one time -- I want to say at one time they 19 used to transfer in fund 26, because fund 26 has no 20 source for funding. 21 But I don't -- I believe that would come 22 from transfer 19, but I don't believe that is something 23 the District has done recently. 24 MR. YOUNG: Okay. Thank you. 25 THE WITNESS: Sure.</p> <p style="text-align: right;">Page 580</p>
<p>1 and then the District receives those funds directly 2 from agencies. 3 MR. JOHNSTON: Okay. So the member agencies 4 collect from the residents, and then they remit a 5 portion to the District? 6 THE WITNESS: That's correct. The member 7 agency collects according to their own rate structure, 8 base structure, but the 14 approximately 83, somewhere 9 around there is earmarked for the District services and 10 that is the treatment portion of water services. 11 MR. JOHNSTON: Okay. So the -- and do you have 12 any idea what the sewage rates are for the three 13 Districts that would incorporate both the collection 14 rate and the treatment rate? 15 THE WITNESS: I want to say somewhere around -- 16 \$45 sounds right to me. They do different structures. 17 I have called three member agencies in the past. It's 18 been quite some time. I believe that one of them is 19 based upon water usage. The other is based upon a flat 20 sewer rate. But the ballpark number that is off the 21 top of my head is about \$45, in which the District gets 22 14 or something. 23 MR. JOHNSTON: Thank you. 24 THE WITNESS: Sure. 25 MR. YOUNG: Does the District operate on --</p> <p style="text-align: right;">Page 579</p>	<p>1 MR. YOUNG: All right. That concludes the 2 testimony for this witness, I believe. 3 And is that all you have for your case -- 4 THE WITNESS: Thank you. 5 MR. YOUNG: -- through Mr. Yonkers? 6 MS. THORME: I was just going to ask him -- we 7 have how much time left? 8 MR. YOUNG: Well, we're doing closing arguments 9 at this point. 10 MS. THORME: Okay. Well, I would like to move 11 all the remaining documents into evidence because there 12 was no objection. So just for housekeeping purposes, 13 we ask that all the District's documents will be moved 14 in. 15 MR. YOUNG: Okay. 16 MS. JAHR: Yes, they were moved. 17 MS. THORME: Thank you. 18 MS. MACEDO: Yes, to the extent that we have 19 dissolved all the objections regarding the prosecution 20 team's documents, I move that regarding our documents 21 as well, and I believe the last known exhibit for the 22 hearing is the 118, which was provided to the Board and 23 council, which was a copy of the prosecution team's 24 PowerPoint presentation used today. 25 MS. JAHR: That's correct. This is exhibit --</p> <p style="text-align: right;">Page 581</p>

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<p>1 MR. YOUNG: Okay. So we have five minutes for 2 closing arguments, and the District goes first, and 3 then the prosecution goes last. 4 MS. MACEDO: And then we're done. 5 MR. YOUNG: Yeah. I'm just curious, are there 6 any members of the public that were not here when we 7 took their statements that still want to address the 8 Board? 9 Okay. Good. All right. 10 MS. THORME: Okay. So you -- and I apologize, 11 but this isn't the most coherent closing argument ever, 12 since it is nearly midnight at this point, but I will 13 do my best. 14 So you heard a lot of evidence today and 15 a lot of argument, and your job tonight, after -- when 16 you deliberate this case, is to weigh the facts and 17 judge the credibility of the witnesses, and I need you 18 to remember who has the burden of proof in this case. 19 So the prosecution team has the burden to 20 disprove the District's spill volume estimates, and the 21 burden to prove each of the harm factors selected with 22 evidence. 23 The prosecution team failed to show that 24 the District's spill volume estimate was unreasonable. 25 They just said, basically they would do it differently.</p> <p style="text-align: right;">Page 582</p>	<p>1 culpability without justification. And there was no 2 credit given for cooperation or stellar sewer system 3 spill history, where there has been no sewer spills 4 from this District in 25 years. 5 They failed to justify any alleged 6 economic benefit, given the evidence that was presented 7 today or excessive staff costs. We've never been 8 provided with any timesheets to justify hour-by-hour, 9 the cost that they are claiming. 10 And they also failed to recognize that 11 there are severe road blocks to the ability to pay, and 12 that evidence was in Exhibit 98, among other places. 13 But Exhibit B, we laid out, based on the budget, which 14 is also an exhibit, which is how the District works and 15 funds their projects, that it was a very difficult 16 ability to pay problem. They have a large loan, which 17 was also in evidence, that they have to pay. 18 So at the very least, we would ask the 19 Board to decrease the fine or decrease the volume or 20 decrease the factors, which are all, as you know, there 21 is sensitivity analysis, that if you move any of those 22 things in that spreadsheet, that the numbers go up or 23 down. 24 We would also ask you that you seriously 25 consider the upset and bypass defenses. They are in</p> <p style="text-align: right;">Page 584</p>
<p>1 And particularly with the CIWQS 2 requirement, as they currently exist, the 3 manhole-by-manhole approach was the approach that was 4 told to them by Jim Fischer, and that is what they did. 5 The prosecution team failed to justify 6 each of the enforcement factors, and the harm factor is 7 much higher than any other ACL. 8 If you look at Exhibit 101, which is up 9 on the screen right now, this shows numerous ACL 10 documents that we turned in as evidence in this case. 11 This document does not encompass all of them. We did 12 not prepare this document. This was prepared by the 13 prosecution team. 14 But as you see, the red line in the 15 middle is the District. And that is the harm factor of 16 five. Every other one of these was a harm factor of 17 one to four. And numerous of these, which we will talk 18 about in a minute on the other side of this, were for 19 much larger spills. And some of these spills happened 20 on the same day as this. 21 The District was not given any recovery 22 credit, even though it tried to store as much as 23 possible and was working very hard and had the backup 24 pump to push things through the treatment plant. 25 They gave them a higher than neutral</p> <p style="text-align: right;">Page 583</p>	<p>1 the permit for a reason. And discharger State that 2 those words in that permit actually mean something. 3 Even if the Water Boards never allow those defenses to 4 exist. And since the clean water act is strict 5 liability, there are no other defenses besides upset 6 and bypass. That is it. 7 And the District met its burden to meet 8 for each of these things. They showed that there was 9 an exceptional incident causing intentional and 10 temporary noncompliance and the causes identified. We 11 know what those things are. 12 The permitted facility, at that time, was 13 being properly operated and had not had a spill in 25 14 years. 15 The District submitted the required 16 notice. There was no counter evidence that the notice 17 was not timely, and they took the necessary remedial 18 measures. 19 Next slide, please. 20 Upset is an affirmative defense. And 21 they threw out a red herring that this was not a 22 technology based requirement, and we didn't address the 23 fact that it was technology based. A zero spill 24 standard is technology based. 25 If you have one spill, you have violated</p> <p style="text-align: right;">Page 585</p>

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<p>1 that technology based standard, and that was in our 2 briefs, and we are argued it numerous times, even 3 though it was not recognized by the prosecution team. 4 And in the 9th circuit, which is where we live, they 5 had actually recognized the upset defense, and the 6 cases that were cited by the prosecution team were all 7 District Court cases in New Jersey and Connecticut and 8 other places that cannot overrule the 9th circuit. And 9 we did showcases that actually found that sewer spills 10 can be upsets.</p> <p>11 Next slide, please.</p> <p>12 And the other is bypass. And this 13 assists with many of the alleged violations, including 14 the storm water violation and part of the storage. So 15 the District -- the prosecution team tried to say that 16 this was not an intentional spill, and therefore, 17 bypass does not reply.</p> <p>18 But they took -- the District took 19 intentional acts to protect the integrity of the 20 wastewater treatment plant. And Mr. Appleton testified 21 that he intentionally did certain things, such as 22 intentionally close the input gates to stop the water 23 from coming to the treatment plant to protect the 24 headworks and to protect the downstream secondary 25 treatment from washing out.</p> <p style="text-align: right;">Page 586</p>	<p>1 and a \$700,000 penalty for 43 million gallons from raw 2 sewage.</p> <p>3 And I would like to point out in Exhibit 4 89 dash -- page 8. This regional board has been 5 reasonable in the past. In one of your own ACL's, you 6 had 1.8 -- 1.2 million dollar penalty, and \$800,000 of 7 it was suspended if certain things happened. And 200 8 was in penalty and 200 was in SEP. So I would say that 9 you have in the past, exercised great flexibility. And 10 this was a recent ACL, so it was under the Enforcement 11 policy as is.</p> <p>12 So we would just urge you to please use 13 the flexibility that you have. Either to recognize the 14 defenses that are in the permit, or to exercise your 15 flexibility in either the spill volume amount or the 16 harm factors.</p> <p>17 Thank you very much for sitting through 18 this entire day. I know it has been painful.</p> <p>19 MR. YOUNG: Okay. You went over by three 20 minutes. I didn't want to stop you. I just wanted to 21 let you know, so she has the same amount of time. So 22 eight minutes.</p> <p>23 MS. MACEDO: Thank you.</p> <p>24 Rate payers are understandably concerned 25 about the penalty in this matter. However, the Board</p> <p style="text-align: right;">Page 588</p>
<p>1 There are bugs in that treatment process, 2 but if you wash them out, they are not going to work 3 anymore, and then you would have had the effluent not 4 meeting standards, which it did during the entire time.</p> <p>5 He shut down the sumps that had the storm 6 water to stop that storm water from coming back and 7 creating more of a problem and washing out the 8 treatment plant. And they intentionally set wastewater 9 to the sludge lagoons.</p> <p>10 So that was an unavoidable bypass to 11 prevent severe property damage to the downstream part 12 of the plant. There were no feasible alternatives at 13 that time. They are on the ground. That is when you 14 look at alternatives. And they had the bypass pump 15 there for the one thing that they considered would 16 happen, was that all the influent pumps would go down. 17 And again, they submitted the notice as was required. 18 So we believe that they met all of these things.</p> <p>19 So if we can have Exhibit 101, page one, 20 please.</p> <p>21 So finally, I would ask you to consider 22 consistency. There were many other larger spills. If 23 you look at that top spill right there (indicating). 24 Victor Valley happened also December 19th, 2010 -- 43 25 million gallons. They were given two cents a gallon,</p> <p style="text-align: right;">Page 587</p>	<p>1 should recognize that there are options that the 2 District has.</p> <p>3 First, to the extent to believe that 4 there was a negligent third party, such as the Wallace 5 Group, that can seek contribution from it.</p> <p>6 Secondly, the homeowners may have other 7 options to recoup costs for water intrusion claims.</p> <p>8 Mr. Horner testified that the District 9 has the ability to pay, and the District can pay this 10 penalty without passing on any fine to its rate payer.</p> <p>11 Keep in mind that the District put on 12 hired experts and spent significant legal fees fighting 13 this fee, but continues to risk water quality impact 14 based on Katie DiSimone's testimony.</p> <p>15 It is up to you to weigh the credibility 16 of the hired experts versus the witnesses put on by the 17 prosecution team, who included the former CPO, Jeff 18 Appleton, who has nothing to gain by assisting the 19 prosecution team and was present on the day of the 20 spill.</p> <p>21 The District presented not a single 22 witness who was present on the day of the spill. The 23 district presented not a single witness who was present 24 at the plant on the day of the spill.</p> <p>25 THE REPORTER: Excuse me. Could you slow down</p> <p style="text-align: right;">Page 589</p>

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<p>1 please? It's late.</p> <p>2 MS. MACEDO: I apologize.</p> <p>3 Let's look at the experts the District</p> <p>4 presented.</p> <p>5 RMC used 14 nonflooding events for</p> <p>6 comparison. And yet, under the District's permit, it</p> <p>7 is responsible for the discharge of any storm water</p> <p>8 that mixes with sewage.</p> <p>9 Furthermore, RMC presented no adequate</p> <p>10 explanation or analysis of Monday's spill. CH2M Hill</p> <p>11 conducted a peer review of the District's method, but</p> <p>12 incorporated any errors and unreliable -- unreliability</p> <p>13 in the District's volume calculation in its own</p> <p>14 conclusions.</p> <p>15 Contrast that with evidence that the</p> <p>16 prosecution team presented.</p> <p>17 There were several unresolved issues that</p> <p>18 were known and should have been repaired prior to the</p> <p>19 spill. Not just the electrical issue that may or may</p> <p>20 not have been the cause of the overflow, but the wear</p> <p>21 on the wires that led to fires because of standing</p> <p>22 water issues at the plant.</p> <p>23 In addition, an SOP related to a valve</p> <p>24 effective response time on the day of the spill. A</p> <p>25 backup pump worked only intermittently. A leaky</p> <p style="text-align: right;">Page 590</p>	<p>1 While the prosecution team has not spent</p> <p>2 significant time during today's hearing on the upset</p> <p>3 and bypass defenses, we did cover these defenses in</p> <p>4 great detail in our rebuttal brief. The reason we did</p> <p>5 not spend much time on them is, because it is clear</p> <p>6 legally, they do not apply. They apply only to</p> <p>7 technology-based effluent limitation, such as B.O.D.</p> <p>8 and T.S.S., and not discharge violations such as this.</p> <p>9 The main issues for the Board to decide</p> <p>10 is that the District did not use proper maintenance.</p> <p>11 The volume of the spill largely determines the amount</p> <p>12 of the penalty, and the District's method is clearly</p> <p>13 after the facts.</p> <p>14 After this spill, they then looked around</p> <p>15 at the manholes and guessed at what flowed out of them.</p> <p>16 The Board and the prosecution team must use the penalty</p> <p>17 calculator, per the enforcement policy.</p> <p>18 Any variation of the proposed penalty,</p> <p>19 must use the calculator and the factors. An express --</p> <p>20 excuse me.</p> <p>21 While you can modify the factors to the</p> <p>22 extent you simply want to change the amount of the</p> <p>23 penalty, you must make an express finding to do so</p> <p>24 under step seven, as required by the policy.</p> <p>25 As the Board evaluates the penalty</p> <p style="text-align: right;">Page 592</p>
<p>1 influent gate, may not have been addressed in over 40</p> <p>2 years. These delayed maintenance issues are not acts</p> <p>3 of God.</p> <p>4 I'd like to answer Ms. Thorne's earlier</p> <p>5 question to Ms. DiSimone during cross-examination when</p> <p>6 she asked if it would be better to see money spent on</p> <p>7 plant improvements versus penalties.</p> <p>8 It is disappointing to hear that the</p> <p>9 District's suggestion that penalties be used as a</p> <p>10 budgeting and planning mechanism. If proper funds had</p> <p>11 been budgeted and implemented when the problems were</p> <p>12 first recognized, we would not have to be here</p> <p>13 discussing the District's preference to spend money at</p> <p>14 the plant over penalties.</p> <p>15 The District had the chance in 2004,</p> <p>16 2005, 2006, 2007, 2008, 2009 and 2010 to invest in its</p> <p>17 plant and it chose not to. It is now too late to avoid</p> <p>18 a penalty in lieu of saying, "Oh, we have upgrades we</p> <p>19 need to do."</p> <p>20 However, it is not too late for the Board</p> <p>21 to send the District a message about the importance of</p> <p>22 prompt attention to identify problems and deficiency.</p> <p>23 The Board should enforce this message and</p> <p>24 approve the ACLC in the amount the prosecution team has</p> <p>25 requested.</p> <p style="text-align: right;">Page 591</p>	<p>1 factors in the methodology presented by Ms. DiSimone,</p> <p>2 please consider precedent setting implications. The</p> <p>3 factors presented to the Board are consistent with</p> <p>4 other ACLC's in this state, and the 2010 Enforcement</p> <p>5 Policy.</p> <p>6 We thank the board for its considerable</p> <p>7 effort in preparing for this hearing, it's thoughtful</p> <p>8 questions, and it's anticipated order.</p> <p>9 MR. YOUNG: Okay. Let's see where we're at.</p> <p>10 On my list, we would have a recommendation by the</p> <p>11 executive officer.</p> <p>12 MS. JAHR: Right. We should close the public</p> <p>13 hearing.</p> <p>14 MR. YOUNG: Before that?</p> <p>15 MS. JAHR: Yeah. The public hearing should now</p> <p>16 be closed.</p> <p>17 MS. MACEDO: Yes.</p> <p>18 MR. YOUNG: Okay. Yeah, there's no -- we're</p> <p>19 done with the cases.</p> <p>20 MS. MACEDO: Yes.</p> <p>21 MR. YOUNG: Definitely. I thought that was</p> <p>22 kind of --</p> <p>23 MS. JAHR: That's a good thing to do.</p> <p>24 MR. YOUNG: Right. We're done with the</p> <p>25 testimony portion of this hearing.</p> <p style="text-align: right;">Page 593</p>

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1 MS. MACEDO: Yes.
2 MR. YOUNG: In fact, we were even before you
3 gave your closing arguments.
4 Okay. What are the recommendations by
5 the executive officers?
6 MR. JEFFRIES: Go home.
7 MR. JOHNSTON: Closed sessions.
8 MR. YOUNG: Well, I think what is obvious, is
9 that we don't have the time to deliberate tonight. It
10 is actually tomorrow. It's after midnight.
11 We need time to sit and talk to one
12 another and go over our notes and discuss this. And so
13 it's -- I don't know how much time it is going to take,
14 but we can't do justice trying to do it now.
15 So we are going to have to renote this
16 for a -- we can't meet otherwise, or we can't get
17 together on our own and just talk about this. It has
18 to be a noticed hearing.
19 But we will go into a closed session to
20 do so, which is how we notice this proceeding. And we
21 can't do it before 10 days anyway.
22 MS. JAHR: Correct.
23 MR. YOUNG: And you're not going to be
24 available for at least 14 days?
25 MS. JAHR: I will be available October 1st.

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1 MR. YOUNG: October 1st?
2 MS. JAHR: And after.
3 MR. YOUNG: I'm wondering if we can pick --
4 MR. JOHNSTON: You are supposed to go on your
5 honeymoon.
6 MS. JAHR: Yes.
7 MR. YOUNG: -- while we are together, can we
8 pick a date now to convene?
9 MR. JEFFRIES: Mr. Chair, I need to remind you
10 that through --
11 MS. MACEDO: Does this have to be on the record
12 for the court reporter?
13 MR. JEFFRIES: No.
14 MS. THORME: Yes.
15 MS. MACEDO: Just for the date?
16 MR. YOUNG: Yes. I think it should be on the
17 record, yeah.
18 MS. MACEDO: Okay.
19 MR. YOUNG: Yeah.
20 MR. JEFFRIES: I started to say, Mr. Chair, I
21 have sat here since 8:30 this morning -- yesterday
22 morning, to try to help this Board to get through this
23 particular hearing. And my term ends September 30th.
24 And if that was the case, I could have left at 8:35
25 this morning.

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1 So I hear what you're saying. I
2 understand what you're saying, but I just want to let
3 you know that I may not be available.
4 MR. YOUNG: That's all right. I mean, we
5 have --
6 MR. JEFFRIES: I know you have a quorum, but
7 I --
8 MR. HARRIS: I think, Mr. Jeffries, if we pick
9 something early October, I -- you know, we can make the
10 request to the State Board, to the OCC, to make sure
11 that -- if you are not reappointed, that you are
12 allowed to stay on passed that date.
13 MR. YOUNG: There is a grace period.
14 MR. HARRIS: Well, that is true, but the
15 governor's office is telling everybody to not plan on
16 staying through the grace period, so I'm suggesting
17 that we would make that request to the office of chief
18 counsel to --
19 MR. JEFFRIES: Well, yeah. I know that you
20 have enough people to make a quorum, but I -- it's
21 just -- well, if that was the case, then I wouldn't
22 have sat here through all these hours.
23 MR. YOUNG: Right. And --
24 MS. THORME: I just want to put an objection on
25 the record to continuing it for deliberation for many

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1 reasons.
2 One, it allows people to look at evidence
3 that they might not have looked at if they were -- had
4 gone into deliberation right now. You give people
5 weeks of time. This is why you sequester a jury so
6 they don't get to look at other stuff.
7 The fact that one of the board members
8 may not be here, and it's just highly unusual for -- in
9 this type of a case, for you to put over deliberation.
10 MR. YOUNG: Well, I mean, we could have
11 continued the hearing, too.
12 MR. JEFFRIES: Yes.
13 MR. HARRIS: Right.
14 MR. YOUNG: At 6:00, I could have said, we have
15 got to stop. We will renote this and continue it for
16 a later time.
17 The objection is just to the deliberation
18 portion of it, correct?
19 MS. THORME: Yes. I just -- it would be nice
20 to have an end to this sooner.
21 MS. JAHR: Frances could --
22 MR. HARRIS: Well, I'm uncomfortable with
23 having Frances --
24 MR. YOUNG: Frances was not present.
25 MR. HARRIS: Right.

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1 MR. YOUNG: You were, and you have been taking
2 notes --
3 MS. JAHR: I know.
4 MR. YOUNG: -- and you're part of the advisory
5 team.
6 MS. JAHR: I know.
7 MR. YOUNG: She's going on her honeymoon.
8 MR. JEFFRIES: Well, I mean, Mr. Johnston
9 just --
10 MS. JAHR: We have ten days. We can't --
11 DR. WOLF: May I ask a question, because I
12 think you bring up a good point.
13 How unusual is it to -- in similar
14 circumstances, to split it into two days? I mean, if
15 we looked at similar cases, would we be the exception
16 to the rule here? Unheard of or --
17 MS. JAHR: Generally, I would say a 12-hour
18 hearing -- well, wait, no -- a 16-hour hearing is the
19 exception to the rule. It is not at all unusual to
20 continue a hearing when there is no time. And I would
21 say after midnight, depending how long deliberation
22 takes, it is not unreasonable to continue the hearing.
23 As far as your statement about doing it
24 before Friday, we have to have notice for the meeting
25 for ten days prior, so we can't legally do it before

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1 Monday.
2 MS. THORME: You can't just hold this meeting
3 over --
4 MS. JAHR: No.
5 MS. THORME: -- and set it for another date --
6 MS. JAHR: No.
7 MS. THORME: -- tomorrow?
8 MR. YOUNG: Because we didn't give notice to do
9 that.
10 MS. JAHR: Right.
11 MR. YOUNG: We have to notice everything we do.
12 MR. JEFFRIES: Well, we didn't notice it for
13 today either so --
14 MS. JAHR: Actually, yeah, what happens after
15 midnight?
16 MS. THORME: We've got all day today.
17 DR. WOLF: I just thought I would ask that
18 question.
19 MS. JAHR: Exactly.
20 MR. JORDAN: Okay. What is the difference --
21 I'm sorry.
22 MR. YOUNG: Okay. So let's try to figure this
23 out.
24 MR. JORDAN: I just -- it's midnight --
25 MS. JAHR: It's tomorrow already.

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1 MR. JORDAN: Yes. So what's the difference
2 between a one-hour lunch break and --
3 MS. JAHR: -- a sleep break?
4 MR. JORDAN: -- a nine-hour sleep break?
5 MS. JAHR: Because it is really now another
6 day. And so you have to notice it for --
7 MR. JORDAN: Okay. But we're already in
8 another day.
9 MR. JAHR: Right. But we're -- it's part of
10 the same hearing. We have not taken a break. Once you
11 take that break, really, that eight-hour sleep break,
12 it's really another day. You're not --
13 MR. JORDAN: I'm sorry.
14 MR. HARRIS: We have to --
15 MR. YOUNG: Come on. Come on.
16 MR. JOHNSTON: Mr. Chair, I have to say, I have
17 a long-scheduled trip to the East Coast that is
18 scheduled to start on September 26th, and I'm scheduled
19 to return on October 10th.
20 MR. YOUNG: Oh, God.
21 MR. JOHNSTON: I scheduled it around our
22 meeting for this hearing.
23 MR. YOUNG: Are you going to be in California?
24 MR. JOHNSTON: I'm going to be looking at
25 leaves change colors in Maine.

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1 MR. HARRIS: That is highly overrated.
2 MR. JOHNSTON: I'm sure it is. Would you have
3 a little conversation about that?
4 MR. YOUNG: And when are you coming back?
5 MS. JAHR: I come back September 30th.
6 DR. WOLF: I'm a local. I can be here in five
7 minutes
8 MR. HARRIS: How about JeanPierre, once the
9 harvest season starts, you're not available?
10 DR. WOLF: For you, I will go talk to my grapes
11 and move around the harvest time.
12 MS. JAHR: We could have --
13 MR. YOUNG: Are you -- if we can have a closed
14 session, are you able to participate by phone?
15 MS. JAHR: In London?
16 MR. YOUNG: Yes.
17 MS. JAHR: I don't know how much that would
18 cost.
19 MR. YOUNG: Well -
20 MR. JAHR: My phone does not cover
21 international.
22 MR. YOUNG: There's Skype.
23 MS. MACEDO: I do know that it is eight hours
24 ahead. I do know that.
25 MR. THOMAS: She will be --

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1 THE REPORTER: I'm sorry, but could you
2 identify yourself?
3 MR. THOMAS: I'm Michael Thomas.
4 THE REPORTER: Thank you.
5 MR. THOMAS: She will be on her honeymoon so --
6 MR. YOUNG: I understand that.
7 MR. THOMAS: We're asking her to --
8 MR. YOUNG: It's for two hours. I mean --
9 MR. THOMAS: I think it's an extraordinary
10 request.
11 MR. JEFFRIES: It will --
12 MS. JAHR: You know, it's an eight-hour time
13 difference, so if you want to meet during the day, you
14 are going to be meeting --
15 MR. JEFFRIES: It will be noon here and 8:00
16 there.
17 MS. JAHR: Yeah.
18 MR. YOUNG: I mean, what I'm hearing is, it is
19 either we do it before September 26th and you come back
20 on the 30? When do you leave?
21 MS. JAHR: Friday.
22 MR. JEFFRIES: Next Friday.
23 MS. JAHR: In 5 days -- or 6, 7 days.
24 MR. HARRIS: Well, the other option --
25 MS. JAHR: The 17th is the soonest we can

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1 legally notice it, if I got a notice out immediately.
2 MR. HARRIS: I was saying, the other option
3 would be to -- I think we can hang on so that
4 Mr. Jeffries, and we can do without Mr. Johnston --
5 MS. JAHR: Or he can also appear
6 telephonically, if he's willing.
7 MR. YOUNG: All right.
8 MR. HARRIS: That's actually a good idea. That
9 would be easier.
10 MS. JAHR: But he might not be willing to do
11 that.
12 MR. JOHNSTON: I'm not on my honeymoon. I am
13 hopefully going to have a lot of fun, but I'm not going
14 to be on my honeymoon.
15 MR. HARRIS: So you are willing to stand in for
16 a closed session, Mr. Johnston?
17 MR. JOHNSTON: Yeah.
18 MR. HARRIS: Okay.
19 MR. YOUNG: Okay.
20 MR. JOHNSTON: Let me ask another question. We
21 have a closed-session meeting noticed for the 18th, I
22 believe.
23 MR. HARRIS: But it is personnel issues, it's
24 not --
25 MR. JOHNSTON: It's specified?

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1 MR. HARRIS: Yes. Sorry.
2 MR. JOHNSTON: Damn.
3 MR. HARRIS: So you should both download Skype
4 on your computers.
5 MR. YOUNG: Will you be back on the 1st?
6 MS. JAHR: Yes. On the 1st, I'm available.
7 MR. YOUNG: On the 1st.
8 Okay. Is that the best option we have?
9 MS. JAHR: I don't know anyone else's
10 schedules.
11 MR. YOUNG: Yeah. Well, I mean, I'm concerned
12 about waiting that long to do this.
13 MS. JAHR: I know.
14 MR. YOUNG: And so I really would like to
15 advance this as much as we can, even if one or two
16 people have to call in.
17 MR. JEFFRIES: We've been discussing this for
18 15 minutes. We could have been deliberating.
19 MS. THORME: Yeah.
20 MR. YOUNG: Well --
21 DR. WOLF: I'm still awake.
22 MR. JEFFRIES: I suggest that we go into closed
23 session, and let's see what the board -- where they
24 are.
25 MR. YOUNG: Okay.

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1 MR. JEFFRIES: And if it is not going to work,
2 then we will reschedule.
3 MR. YOUNG: Okay.
4 MS. JAHR: We need to announce it.
5 MR. YOUNG: The board is going to go into
6 closed session right now and --
7 MS. JAHR: -- for deliberation.
8 MR. YOUNG: -- for deliberation purposes.
9 (Break taken.)
10 MR. YOUNG: We'll go back on the record, and it
11 is now 12:45 a.m., so --
12 MR. JOHNSTON: It's a new record.
13 MR. YOUNG: Yeah. It took us this amount of
14 time just to decide how to do what we want to do, okay.
15 So we have not made a decision on the issues. We don't
16 have time to do that. We have briefly discussed what
17 to do, and we all need time to come up with that. It
18 just cannot be shoe-horned in.
19 MS. JAHR: I just -- I'm sorry, I just want to
20 clarify. When you say talk about this, you mean
21 discuss it in a closed session, and not in any other
22 way?
23 MR. YOUNG: Yeah.
24 MS. HARRIS: Deliberate.
25 MR. YOUNG: We have not been able to get to

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<p>1 that yet, because there is too much for each of us to 2 share and talk about, and we all have notes. And so we 3 are going to renote a closed-session hearing for 4 deliberation for October 3rd at 10:00 a.m., and we will 5 be here in this building to do it. 6 MR. HARRIS: For three hours? A closed session 7 for three hours? 8 MR. YOUNG: Well, we might as well notice it 9 for longer than that. 10 MR. JOHNSTON: Four hours. 11 MS. JAHR: Notice it for more than three hours. 12 MR. YOUNG: I would say four hours. Notice it 13 for four hours. 14 MR. HARRIS: Yeah. 15 MR. YOUNG: But that is what -- so we're 16 protected. 17 MR. HARRIS: Okay. 18 MR. YOUNG: So there is nothing we can do more 19 at this point. 20 But the board is not going to be 21 deliberating at all. We can't talk to each other about 22 this. And so that is kind of the problem that we have 23 to notice this, so we can all come together again, and 24 do the deliberation. 25 MS. THORME: And then will you report out after</p> <p style="text-align: right;">Page 606</p>	<p>1 went on. That's nothing that we can anticipate. It 2 just happens as people testify, and the different Board 3 members have questions that they want to get 4 answered. 5 Okay. Thank you very much. 6 MS. THORME: Thank you. 7 MS. MACEDO: Thank you. 8 MR. YOUNG: Good night, and we will see you 9 possibly October 3rd. Okay. We're done. 10 (Proceedings concluded Saturday 8, 2012 at 12:58 a.m.) 11 * * * 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 608</p>
<p>1 that closed session in public? 2 MR. YOUNG: Yeah. Yeah. I mean, my sense is, 3 as the chair, we will want to produce an order with 4 findings in it and rationale. And that may take time 5 to do. And I'm sure it is going to take time. I don't 6 know if that can be done during that deliberation 7 period. So we may have something in writing we can 8 share. But if we make a decision, we're going to 9 report that out. 10 Is there anything else for us to discuss, 11 Jessie? 12 MS. JAHR: The only other thing is that the ex 13 parte rules will apply. 14 MR. YOUNG: The ex parte rules will apply, and 15 Board members are free to look at their notes and look 16 at whatever documents that have been given to them. 17 But other than that, we're not going to be talking to 18 one another or to anyone else about this. 19 So I want to thank everybody for staying 20 around this late. It went way longer than we thought. 21 But we were trying to get all the testimony in that we 22 can and give ample time to both sides, and for due 23 consideration for what is going on. 24 I know that a great part of the reason 25 this took so long is all of the Board's questions that</p> <p style="text-align: right;">Page 607</p>	

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